

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
AT HUNTINGTON**

**OHIO VALLEY ENVIRONMENTAL  
COALITION, INC., WEST VIRGINIA  
HIGHLANDS CONSERVANCY, INC.,  
and SIERRA CLUB,**

**Plaintiffs,**

**v.**

**CIVIL ACTION NO. 3:11-cv-115**

**PATRIOT COAL CORPORATION,  
APOGEE COAL COMPANY, LLC,  
CATENARY COAL COMPANY, LLC,  
and HOBET MINING, LLC,**

**Defendants.**

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND FOR CIVIL  
PENALTIES**

**INTRODUCTION**

1. This is an action for declaratory judgment and mandatory injunctive relief and for civil penalties against Defendants Patriot Coal Corporation (“Patriot”), Apogee Coal Company, LLC (“Apogee”), Catenary Coal Company, LLC (“Catenary”) and Hobet Mining, LLC (“Hobet”), for violations of the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq. (hereinafter “the Clean Water Act” or “the CWA”), and the Surface Mining Control and Reclamation Act, 30 U.S.C. § 1201 et seq. (hereinafter “SMCRA”).

2. As detailed below, Plaintiffs allege that Defendants have discharged and continue

to discharge selenium—a pollutant designated as toxic by the U.S. Environmental Protection Agency, 40 C.F.R. § 401.15—into waters of the United States in persistent violation of Section 301 of the Clean Water Act, 33 U.S.C. § 1311, and of the conditions and limitations of ten West Virginia/National Pollution Discharge Elimination System (“WV/NPDES”) Permits issued to Defendants by the State of West Virginia pursuant to Section 402 of the Clean Water Act.

3. Plaintiffs further allege that Defendants’ discharges of unlawful quantities of selenium into the waters adjacent to its mine sites violate the performance standards under SMCRA and the terms and conditions of their surface mining permits.

### **JURISDICTION AND VENUE**

4. This court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question), 33 U.S.C. § 1365 (Clean Water Act citizens’ suit provision), and 30 U.S.C. § 1270 (SMCRA citizens’ suit provision).

5. On December 17, 2010, Plaintiffs gave notice of the violations and its intent to file suit to the Defendants, the United States Environmental Protection Agency (“EPA”), the Office of Surface Mining, Reclamation, and Enforcement (“OSMRE”), and the West Virginia Department of Environmental Protection (“WVDEP”), as required by Section 505(b)(1)(A) of the CWA, 33 U.S.C. § 1365(b)(1)(A), and Section 520(b)(1)(A) of SMCRA, 30 U.S.C. § 1270(b)(1)(A). More than sixty days have passed since notice was served and neither EPA, OSMRE, nor WVDEP has commenced and diligently prosecuted a civil or criminal action to require compliance with the Clean Water Act or SMCRA. Although WVDEP has a civil action pending against Apogee in Logan County Circuit Court, a civil action pending against Catenary

the Boone County Circuit Court, and a Modified Settlement and Consent Order entered in Boone County Circuit Court in December 2010 that relates to Hobet's WV/NPDES Permits WV0099392, WV1016776, WV1020889, and WV1021028, those actions do not preclude this action because WVDEP's actions are not diligent prosecutions to require compliance and do not moot this case because there remains a realistic prospect of future violations. Ohio Valley Envtl. Coalition Inc., v. Hobet Mining, LLC, 723 F. Supp. 2d 886 (S.D. W. Va. 2010).

6. Moreover, neither EPA nor WVDEP commenced an administrative penalty action under Section 309(g) of the CWA, 33 U.S.C. § 1319(g), or comparable state law to redress the violations prior to the issuance of the December 17, 2010 notice letter.

7. Venue in this District is proper pursuant to 33 U.S.C. § 1365(c)(1) because the sources of the Clean Water Act violations are located in this District, and pursuant to 30 U.S.C. § 1270(c) because the coal mining operations complained of are located in this District.

### **PARTIES**

8. Patriot Coal Corporation is a Delaware Corporation doing business in Charleston, West Virginia.

9. Apogee Coal Company, LLC ("Apogee"), is a Delaware Limited Liability Company doing business in Yolyn, West Virginia.

10. Catenary Coal Company, LLC ("Catenary"), is a Delaware Limited Liability Company doing business in Elksdale, West Virginia.

11. Hobet Mining, LLC ("Hobet"), is a West Virginia Limited Liability Company doing business in Madison, West Virginia.

12. Apogee, Catenary, and Hobet are all subsidiaries of Patriot Coal Corporation.

13. Patriot, Apogee, Hobet, and Catenary are persons within the meaning of Section 502(5) of the Clean Water Act, 33 U.S.C. § 1362(5), and Section 701(19) of SMCRA, 30 U.S.C. § 1291(19).

14. At all relevant times, Apogee owned and operated the East Ruffner Complex in Logan County, West Virginia, which is regulated by Surface Mining Permits S007585 and S507986, and which discharges pollutants from various outfalls that are subject to the effluent limitations of WV/NPDES Permit WV0099520.

15. At all relevant times, Catenary owned and operated the Samples Mine Complex, Toms Fork Loadout, and Leewood Haulroad in Boone and Kanawha Counties, West Virginia, which is regulated by, among others, Surface Mining Permits S601287 and O301793, and which discharges pollutants from various outfalls that are subject to the effluent limitations of WV/NPDES Permit WV0093751.

16. At all relevant times, Catenary owned and operated the Samples Mine Complex-Cabin Creek No. 2 Surface Mine in Boone and Kanawha Counties, West Virginia, which is regulated by, among others, Surface Mining Permits S302390, and which discharges pollutants from various outfalls that are subject to the effluent limitations of WV/NPDES Permit WV0096920.

17. At all relevant times, Catenary owned and operated the Samples Mine Complex in Boone and Kanawha Counties, West Virginia, which is regulated by, among others, Surface Mining Permits S302490, S300495, and S301000, and which discharges pollutants from various

outfalls that are subject to the effluent limitations of WV/NPDES Permit WV0096962.

18. At all relevant times, Catenary owned and operated the Stanley Heritage Surface Mine in Boone and Kanawha Counties, West Virginia, which is regulated by Surface Mining Permit S303593, and which discharges pollutants from various outfalls that are subject to the effluent limitations of WV/NPDES Permit WV1014684.

19. At all relevant times, Hobet owned and operated the Sugartree Surface Mine in Boone and Lincoln Counties, West Virginia, which is regulated by Surface Mining Permits S003285, S508088, S502689, S502991, and S501692 and which discharges pollutants from various outfalls that are subject to the effluent limitations of WV/NPDES Permit WV0099392.

20. At all relevant times, Hobet owned and operated the West Ridge Surface Mine (or Hobet No. 21 Mine) in Boone and Lincoln Counties, West Virginia, which is regulated by Surface Mining Permit S500396 and which discharges pollutants from various outfalls that are subject to the effluent limitations of WV/NPDES Permit WV1016776.

21. At all relevant times, Hobet owned and operated the Berry Branch Deep Mine in Lincoln and Boone Counties, West Virginia, which is regulated by Surface Mining Permit U500798 and which discharges pollutants from various outfalls that are subject to the effluent limitations of WV/NPDES Permit WV1017225.

22. At all relevant times, Hobet owned and operated the Westridge No. 3 Surface Mine in Lincoln County, West Virginia, which is regulated by Surface Mining Permit S500203 and which discharges pollutants from various outfalls that are subject to the effluent limitations of WV/NPDES Permit WV1020889.

23. At all relevant times, Hobet owned and operated the Westridge No. 1 Mine in Lincoln and Boone Counties, West Virginia, which is regulated by Surface Mining Permit S500404 and which discharges pollutants from various outfalls that are subject to the effluent limitations of WV/NPDES Permit WV1021028.

24. Plaintiff Ohio Valley Environmental Coalition (hereinafter “OVEC”) is a nonprofit organization incorporated in Ohio. Its principal place of business is in Huntington, West Virginia. It has approximately 1,500 members. Its mission is to organize and maintain a diverse grassroots organization dedicated to the improvement and preservation of the environment through education, grassroots organizing, coalition building, leadership development, and media outreach. The Coalition has focused on water quality issues and is a leading source of information about water pollution in West Virginia.

25. Plaintiff West Virginia Highlands Conservancy, Inc., (hereinafter “WVHC”) is a nonprofit organization incorporated in West Virginia. It has approximately 2,000 members. It works for the conservation and wise management of West Virginia’s natural resources.

26. Plaintiff Sierra Club is a nonprofit corporation incorporated in California, with more than 600,000 members and supporters nationwide and approximately 1,900 members who reside in West Virginia and belong to its West Virginia Chapter. The Sierra Club is dedicated to exploring, enjoying, and protecting the wild places of the Earth; to practicing and promoting the responsible use of the Earth’s resources and ecosystems; to educating and enlisting humanity to protect and restore the quality of the natural and human environment; and to using all lawful means to carry out these objectives. The Sierra Club’s concerns encompass the exploration,

enjoyment and protection of surface waters in West Virginia.

27. Plaintiffs' members suffer injuries to their aesthetic, recreational, environmental, and/or economic interests as a result of Defendants' unlawful discharges of pollutants. Plaintiffs' members fish, swim, observe wildlife, or otherwise use the waters affected by Defendants' discharges and are harmed by the high levels of pollutants that Defendants are discharging in violation of its permits. Plaintiffs' members refrain from swimming, wading, fishing, and/or engaging in other activities in and around the streams affected by Defendants' discharges to avoid exposure to pollutants. Plaintiffs' members are also very concerned about the impacts of pollution from Defendants' discharges on their friends and neighbors and on local wildlife. If Defendants' unlawful discharges ceased, the harm to the interests of Plaintiffs' members could be redressed. Injunctions and/or civil penalties would redress Plaintiffs' members' injuries by preventing and/or deterring future violations of the limits in Defendants' permits.

28. At all relevant times, Plaintiffs were and are "persons" as that term is defined by the CWA, 33 U.S.C. § 1362(5), and SMCRA, 30 U.S.C. § 1291(19).

#### **STATUTORY AND REGULATORY FRAMEWORK**

29. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the "discharge of any pollutant by any person" into waters of the United States except in compliance with the terms of a permit, such as a National Pollution Discharge Elimination System ("NPDES") Permit issued by the EPA or an authorized state pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

30. Section 402(a) of the CWA, 33 U.S.C. § 1342(a), provides that the permit issuing authority may issue a NPDES Permit that authorizes the discharge of any pollutant directly into

waters of the United States, upon the condition that such discharge will meet all applicable requirements of the CWA and such other conditions as the permitting authority determines necessary to carry out the provisions of the CWA.

31. Section 402 of the CWA, 33 U.S.C. § 1342, directs the Administrator of EPA to prescribe conditions for NPDES permits to ensure compliance with the requirements of the CWA, including conditions on data and information collection, reporting, and other such requirements as the Administrator deems appropriate.

32. Effluent limitations, as defined in Section 502(11) of the CWA, 33 U.S.C. § 1362(11), are restrictions on quantity, rate, and concentration of chemical, physical, biological, and other constituents of wastewater discharges. Effluent limitations are among the conditions and limitations prescribed in NPDES permits issued under Section 402(a) of the CWA, 33 U.S.C. § 1342(a).

33. Section 303(a) of the CWA, 33 U.S.C. § 1313(a), requires that states adopt ambient water quality standards and establish water quality criteria for particular water bodies that will protect the designated uses of the water. When technology-based effluent limitations are insufficient to keep receiving waters within those levels, the permit must include stricter water quality based effluent limits (“WQBELs”) that reflect water quality standards and criteria. 33 U.S.C. § 1311(b)(1)(C).

34. At all times relevant to this complaint, the State of West Virginia has been authorized by EPA to administer a NPDES program for regulating the discharges of pollutants into the waters of West Virginia. Permits issued under this program are known as “WV/NPDES”



permits.

35. Holders of WV/NPDES Permits are required to monitor their discharges and report their average monthly discharges and maximum daily discharges on a quarterly basis. Those reports are called “Discharge Monitoring Reports,” or “DMRs.”

36. Section 505(a) of the CWA, 33 U.S.C. § 1365(a), authorizes any “citizen” to “commence a civil action on his own behalf . . . against any person . . . who is alleged to be in violation of . . . an effluent standard or limitation under this chapter.”

37. Section 505(f) of the CWA, 33 U.S.C. § 1365(f), defines an “effluent standard or limitation under this chapter,” for purposes of the citizen suit provision in Section 505(a) of the CWA, 33 U.S.C. § 1365(a), to mean, among other things, an unlawful act under Section 301(a), 33 U.S.C. § 1311(a), of the CWA, a WQBEL, and “a permit or condition thereof issued” under Section 402, 33 U.S.C. § 1342, of the CWA.

38. Section 505(b)(1)(B) of the CWA, 33 U.S.C. § 1365(b)(1)(B), provides that citizen enforcement may be precluded only if the federal government or State “has commenced and is diligently prosecuting a civil or criminal action in a court of the United States, or a State to require compliance with [the particular] standard, limitation, or order [at issue].” (Emphasis added.)

39. In an action brought under Section 505(a) of the CWA, 33 U.S.C. § 1365(a), the district court has jurisdiction to order the defendant or defendants to comply with the CWA and to assess civil penalties under Section 309(d) of the CWA, 33 U.S.C. § 1365(d). See 33 U.S.C. § 1365(a).

40. Section 309(d) of the CWA, 33 U.S.C. § 1319(d), provides that any person who violates Section 301 of the CWA, 33 U.S.C. § 1311, or violates any permit condition or limitation in a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, shall be subject to a civil penalty payable to the United States of up to \$25,000 per day for each violation.

41. Pursuant to the Federal Civil Penalties Adjustment Act of 1990, 28 U.S.C. § 2461 note, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note, the court may assess a civil penalty of \$37,500 per day for each violation that occurred after January 12, 2009. See 40 C.F.R. § 19.4.

42. Under Section 505(d) of the CWA, 33 U.S.C. § 1365(d), the court “may award costs of litigation (including reasonable attorney and expert witness fees) to any prevailing or substantially prevailing party, whenever the court determines such an award is appropriate.”

43. Section 506 of SMCRA, 30 U.S.C. § 1256, prohibits any person from engaging in or carrying out surface coal mining operations without first obtaining a permit from the Office of Surface Mining Reclamation and Enforcement (“OSMRE”) or from an approved state regulatory authority.

44. At all relevant times, the State of West Virginia has administered an approved surface mining regulatory program. See 30 C.F.R. § 948.10.

45. The legislative rules promulgated under the WVSCMRA provide that, as a general condition of all surface mining permits issued under the WVSCMRA, the permittee must comply with all applicable performance standards. 38 C.S.R. § 2-3.33.c.

46. Among the performance standards mandated by SMCRA and the West Virginia

Surface Coal Mining and Reclamation Act (“WVSCMRA”) is that mining activities must be conducted in such a manner so as to “prevent material damage to the hydrologic balance outside the permit area.” 30 C.F.R. §§ 816.41(a) and 817.41(a); 38 C.S.R. § 2-14.5.

47. Another performance standard mandated by SMCRA and the WVSCMRA is that “[d]ischarge from areas disturbed by . . . mining shall not violate effluent limitations or cause a violation of applicable water quality standards.” 30 C.F.R. §§ 816.42 and 817.42; 38 C.S.R. § 2-14.5.b.

48. Section 520(a) of SMCRA, 30 U.S.C. § 1270(a), authorizes any person adversely affected to bring an action in federal court to compel compliance with SMCRA against any “person who is alleged to be in violation of any rule, regulation, order or permit issued pursuant to [SMCRA].”

49. Section 520(b)(1)(B) of SMCRA, 30 U.S.C. § 1270(b)(1)(B), provides that citizen enforcement may be precluded only if the federal government or State “has commenced and is diligently prosecuting a civil action in a court of the United States or a State to require compliance with the provisions of this chapter, or any rule, regulation, order, or permit issued pursuant to this chapter . . .” (Emphasis added.)

50. Section 520(d) of SMCRA, 30 U.S.C. § 1270(d), authorizes the Court to award the costs of litigation, including attorney fees and expert witness fees, “to any party, whenever the court determines such an award is appropriate.”

51. WVDEP is the agency in the State of West Virginia that administers that State’s CWA and SMCRA programs, and issues WV/NPDES Permits and WVSCMRA Permits.

**FACTS**

**WV/NPDES Permit WV0099520**

52. At all relevant times, Apogee has held WV/NPDES Permit Number WV0099520 to regulate water pollution from its East Ruffner Complex.

53. At all relevant times, Apogee has held WVSCMRA Permits S007585 and S507986 for its East Ruffner Complex.

54. WV/NPDES Permit Number WV0099520 places limits on the concentrations of selenium that Apogee can discharge into Rum Creek of the Guyandotte River from Outfall 001 and Buffalo Creek of the Guyandotte River from Outfall 011. Each of those waterways is a navigable water of the United States.

55. On or about April 5, 2007, WVDEP issued Order No. 493 to Apogee. That Order delayed the effective date of the permit's final selenium effluent limitations until April 5, 2010.

56. Order No. 493 placed additional obligations on Apogee regarding selenium treatment and compliance. Among other things, Order No. 493 required Apogee to commence construction of selenium treatment facilities by October 5, 2008, and to complete installation of the requisite selenium treatment facilities by April 5, 2010.

57. On information and belief, Plaintiffs allege that Apogee failed to commence construction of selenium treatment facilities on Outfalls 001 and 011 by October 5, 2008.

58. On information and belief, Plaintiffs allege that Apogee failed to complete installation of selenium treatment facilities on Outfalls 001 and 011 by April 5, 2010.

59. On April 5, 2010, the selenium effluent limitations in WV/NPDES Permit

WV0099520 became final and effective.

60. The DMRs that Apogee submitted to WVDEP for Outfalls 001 and 011 reveal that Apogee has accrued at least 373 days of violation of the selenium limits on those outfalls by violating either the daily maximum or monthly average final effluent limitations for selenium on 29 occasions since April 5, 2010. Those violations are set out in Appendix A to this Complaint.

61. On the basis of Apogee's violations of its effluent limitations in WV/NPDES Permit Number WV0099520 and the absence of any evidence of any meaningful efforts by Apogee to eradicate the cause of the violations, Plaintiffs allege that Apogee is in continuing and/or intermittent violation of the Clean Water Act and SMCRA.

**WVDEP Actions Related to Apogee's WV/NPDES Permits WV0099520**

62. On or about March 3, 2010, WVDEP provided public notice of its intention to modify the schedule of compliance for selenium in Apogee's WV/NPDES Permit WV0099520 to further delay the effective date of the selenium effluent limitations in those permits until July 1, 2012.

63. On April 14, 2010, Plaintiffs in this action sent a 60-day notice of their intent to sue Apogee for violating the selenium limits in WV/NPDES Permit WV0099520.

64. On or about May 27, 2010, EPA specifically objected to the proposed modifications to the schedules of compliance in Apogee's WV/NPDES Permit WV0099520 pursuant to 40 C.F.R. § 123.44. In essence, EPA prohibited WVDEP from modifying the final effective date of Apogee's selenium effluent limitations.

65. On or about June 11, 2010, WVDEP commenced Civil Action No. 10-C-144

against Apogee in the Circuit Court of Logan County West Virginia, purporting to prosecute violations of the selenium limits in Apogee's WV/NPDES Permit WV0099520.

66. On information and belief, Plaintiffs allege that Civil Action No. 10-C-144 is not being diligently prosecuted.

67. In its complaint, WVDEP expressly requested the following relief regarding WV/NPDES Permit WV0099520: "That the Court set a new schedule of compliance regarding Selenium and order Apogee to immediately comply with the same[;]" "That the aforementioned compliance order contain an appropriate schedule of descending limits regarding Selenium couple [sic] with stipulated penalties should Apogee fail to meet the Court ordered limits[;] and "That the Court set a date certain when Apogee's discharges shall begin to meet the applicable water quality standards for selenium."

68. The complaint in Civil Action No. 10-C-144 does not seek to require compliance with the effluent limitations in WV/NPDES Permit WV0099520. Rather, it seeks to delay compliance with those limitations. Accordingly, Civil Action No. 10-C-144 does not preclude this action under 33 U.S.C. § 1365(b)(1)(B) or 30 U.S.C. § 1270(b)(1)(B).

69. Through Civil Action No. 10-C-144, WVDEP has attempted to achieve through the judicial process precisely what US EPA prohibited it from doing through the permitting process.

**WV/NPDES Permit WV0093751**

70. At all relevant times, Catenary has held WV/NPDES Permit Number WV0093751 to regulate water pollution from its Samples Mine Complex.

71. At all relevant times, Catenary has held WVSCMRA Permits S601287 and O301793, among others, for its Samples Mine Complex.

72. WV/NPDES Permit Number WV0093751 places limits on the concentrations of selenium that Catenary can discharge into Left Fork of Laurel Fork of Coal Fork from Outfalls 003 and 005 and Toms Fork of Cabin Creek from Outfall 026. Each of those waterways is a navigable water of the United States.

73. WVDEP issued Order No. 198 to Catenary, which delayed the effective date of the permit's final selenium effluent limitations until January 9, 2010.

74. Order No. 198 placed additional obligations on Catenary regarding selenium treatment and compliance. Among other things, Order No. 198 required Catenary to submit design plans and specifications for selenium treatment facilities by January 9, 2009, and to complete installation of the requisite selenium treatment facilities by January 9, 2010.

75. On information and belief, Plaintiffs allege that Catenary failed to submit design plans and specifications for selenium treatment facilities on Outfalls 003, 005, and 026 by January 9, 2009.

76. On information and belief, Plaintiffs allege that Catenary failed to complete installation of selenium treatment facilities on Outfalls 003, 005, and 026 by January 9, 2010.

77. On January 9, 2010, the selenium effluent limitations in WV/NPDES Permit WV0093751 became final and effective.

78. The DMRs that Catenary submitted to WVDEP for Outfalls 003, 005, and 026 reveal that Catenary has accrued at least 931 days of violation of the selenium limits on those

outfalls by violating either the daily maximum or monthly average final effluent limitations for selenium on 70 occasions since January 9, 2010. Those violations are set out in Appendix B to this Complaint.

79. On the basis of Catenary's violations of its effluent limitations in WV/NPDES Permit Number WV0093751 and the absence of any evidence of any meaningful efforts by Catenary to eradicate the cause of the violations, Plaintiffs allege that Catenary is in continuing and/or intermittent violation of the Clean Water Act and SMCRA.

**WV/NPDES Permit Number WV0096920**

80. At all relevant times, Catenary has held WV/NPDES Permit Number WV0096920 to regulate water pollution from its Samples Mine Complex-Cabin Creek No. 2 Surface Mine.

81. At all relevant times, Catenary has held WVSCMRA Permit S302390 for its Samples Mine Complex-Cabin Creek No. 2 Surface Mine.

82. WV/NPDES Permit Number WV0096920 places limits on the concentrations of pollutants that Catenary can discharge into Toms Fork of Cabin Creek of the Kanawha River from Outfall 001. That waterway is a navigable water of the United States.

83. On or about January 22, 2007, WVDEP reissued WV/NPDES Permit WV0096920 to Catenary.

84. Simultaneously with the reissuance of WV/NPDES Permit WV0096920, WVDEP issued Order No. 199 to Catenary. Order No. 199 incorporated a schedule of compliance for Outfall 001 that placed effective limits on that outfall as of January 23, 2010.

85. Order No. 199 placed additional obligations on Catenary regarding selenium



treatment and compliance. Among other things, Order No. 199 required Catenary to submit treatment plans for selenium by October 31, 2007, and to complete installation of the requisite selenium treatment facilities by October 31, 2009.

86. On information and belief, Plaintiffs allege that Catenary failed to submit selenium treatment plans on Outfall 001 by October 31, 2007.

87. On information and belief, Plaintiffs allege that Catenary failed to complete installation of selenium treatment facilities on Outfall 001 by October 31, 2009.

88. On January 23, 2010, the selenium effluent limitations in WV/NPDES Permit WV0096920 became final and effective.

89. The DMRs that Catenary submitted to WVDEP for Outfall 001 reveal that Catenary has accrued at least 361 days of violation of the selenium limits on those outfalls by violating either the daily maximum or monthly average final effluent limitations for selenium on 30 occasions since January 23, 2010. Those violations are set out in Appendix C to this Complaint.

90. On the basis of Catenary's violations of its effluent limitations in WV/NPDES Permit Number WV0096920 and the absence of any evidence of any meaningful efforts by Catenary to eradicate the cause of the violations, Plaintiffs allege that Catenary is in continuing and/or intermittent violation of the Clean Water Act and SMCRA.

**WV/NPDES Permit WV0096962**

91. At all relevant times, Catenary has held WV/NPDES Permit Number WV0096962 to regulate water pollution from its Samples Mine Complex.

92. At all relevant times, Catenary has held WVSCMRA Permits S302490, S300495, and S301000, among others, for its Samples Mine Complex.

93. WV/NPDES Permit Number WV0096962 places limits on the concentrations of selenium that Catenary can discharge into Left Fork of White Oak Creek from Outfalls 001 and 056, an unnamed tributary of Right Fork of White Oak Creek from Outfall 042, an unnamed tributary of White Oak Creek from Outfall 044, and Fourmile Branch from Outfall 055. Each of those waterways is a navigable water of the United States.

94. On or about April 5, 2007, WVDEP issued Order No. 775 to Catenary. That Order delayed the effective date of the permit's final selenium effluent limitations until April 6, 2010.

95. Order No. 775 placed additional obligations on Catenary regarding selenium treatment and compliance. Among other things, Order No. 775 required Catenary to commence construction of selenium treatment facilities by October 5, 2008, and to complete installation of the requisite selenium treatment facilities by April 5, 2010.

96. On information and belief, Plaintiffs allege that Catenary failed to commence construction of selenium treatment facilities on Outfalls 001, 042, 044, 055, and 056 by October 5, 2008.

97. On information and belief, Plaintiffs allege that Catenary failed to complete installation of selenium treatment facilities on Outfalls 001, 042, 044, 055, and 056 by April 5, 2010.

98. On April 6, 2010, the selenium effluent limitations in WV/NPDES Permit

WV0096962 became final and effective.

99. The DMRs that Catenary submitted to WVDEP for Outfalls 001, 042, 044, 055, and 056 reveal that Catenary has accrued at least 1,437 days of violation of the selenium limits on those outfalls by violating either the daily maximum or monthly average final effluent limitations for selenium on 132 occasions since April 6, 2010. Those violations are set out in Appendix D to this Complaint.

100. On the basis of Catenary's violations of its effluent limitations in WV/NPDES Permit Number WV0096962 and the absence of any evidence of any meaningful efforts by Catenary to eradicate the cause of the violations, Plaintiffs allege that Catenary is in continuing and/or intermittent violation of the Clean Water Act and SMCRA.

**WV/NPDES Permit Number WV1014684**

101. At all relevant times, Catenary has held WV/NPDES Permit Number WV1014684 to regulate water pollution from its Stanley Heritage Surface Mine.

102. At all relevant times, Catenary has held WVSCMRA Permit S303593 for its Stanley Heritage Surface Mine.

103. WV/NPDES Permit Number WV1014684 places limits on the concentrations of pollutants that Catenary can discharge into an unnamed tributary of Seng Creek from Outfalls 001 and 002, into Rockhouse Creek from Outfall 003, and into Tenmile Fork of Cabin Creek from Outfall 006. Each of those waterways is a navigable water of the United States.

104. On or about April 5, 2007, WVDEP issued Amended Order No. 1 to Catenary. That Order delayed the effective date of the permit's final selenium effluent limitations until

April 6, 2010.

105. Amended Order No. 1 placed additional obligations on Catenary regarding selenium treatment and compliance. Among other things, Amended Order No. 1 required Catenary to commence construction of selenium treatment facilities by October 5, 2008, and to complete installation of the requisite selenium treatment facilities by April 5, 2010.

106. On information and belief, Plaintiffs allege that Catenary failed to commence construction of selenium treatment facilities on Outfalls 001, 002, 003, and 006 by October 5, 2008.

107. On information and belief, Plaintiffs allege that Catenary failed to complete installation of selenium treatment facilities on Outfalls 001, 002, 003, and 006 by April 5, 2010.

108. On April 6, 2010, the selenium effluent limitations in WV/NPDES Permit WV1014684 became final and effective.

109. The DMRs that Catenary submitted to WVDEP for Outfalls 001, 002, 003, and 006 reveal that Catenary has accrued at least 1,149 days of violation of the selenium limits on those outfalls by violating either the daily maximum or monthly average final effluent limitations for selenium on 105 occasions since April 6, 2010. Those violations are set out in Appendix E to this Complaint.

110. On the basis of Catenary's violations of its effluent limitations in WV/NPDES Permit Number WV1014684 and the absence of any evidence of any meaningful efforts by Catenary to eradicate the cause of the violations, Plaintiffs allege that Catenary is in continuing and/or intermittent violation of the Clean Water Act and SMCRA.

**WVDEP Actions Related to Catenary's WV/NPDES Permits**

111. Plaintiffs put Catenary on notice of their intent to prosecute Catenary for violations of the selenium limits in WV/NPDES Permits WV0093751 and WV0096920 on February 23, 2010.

112. On or about April 23, 2010, WVDEP commenced Civil Action No. 10-C-96 against Catenary in the Circuit Court of Boone County West Virginia, purporting to prosecute violations of the selenium limits in Catenary's WV/NPDES Permit WV0093751 and WV0096920.

113. On or about March 3, 2010, WVDEP provided public notice of its intention to modify the schedules of compliance for selenium in Catenary's WV/NPDES Permits WV0096962 and WV1014684 to further delay the effective date of the selenium effluent limitations in those permits until July 1, 2012.

114. On April 14, 2010, Plaintiffs put Catenary on notice of their intent to prosecute Catenary for violations of the selenium limits in WV/NPDES Permits WV0096929 and WV1014684.

115. On or about May 27, 2010, EPA specifically objected to the proposed modifications to the schedules of compliance in Catenary's WV/NPDES Permits WV0096962 and WV1014684 pursuant to 40 C.F.R. § 123.44. In essence, EPA prohibited WVDEP from modifying the final effective date of Catenary's selenium effluent limitations.

116. On or about June 11, 2010, WVDEP amended the complaint in Civil Action No. 10-C-96 to include allegations of violations of the selenium effluent limits in Catenary's

WV/NPDES Permits WV0096962 and WV1014684.

117. In its amended complaint, WVDEP expressly requested the following relief regarding WV/NPDES Permits WV0096962 and WV1014684: “That in regard to Permit Nos. WV0096962 and WV1014684 the Court set a new schedule of compliance regarding selenium and order Catenary to immediately comply with the same[;]” “That the aforementioned compliance order contain an appropriate schedule of descending limits regarding Selenium couple [sic] with stipulated penalties should Catenary fail to meet the Court ordered limits[;] and “That the Court set a date certain when Catenary’s discharges shall begin to meet the applicable water quality standards for selenium.”

118. The amended complaint in Civil Action No. 10-C-96 does not seek to require compliance with the effluent limitations in WV/NPDES Permits WV0096962 and WV1014684. Rather, it seeks to delay compliance with those limitations. Accordingly, Civil Action No. 10-C-96 does not preclude this action under 33 U.S.C. § 1365(b)(1)(B) or 30 U.S.C. § 1270(b)(1)(B).

119. Moreover, Civil Action No. 10-C-96 is not a diligent prosecution as to WV/NPDES Permits WV0093751 and WV0096920. Since the time that WVDEP filed its complaint on or about April 23, 2010, little has been done to move the case forward. Accordingly, Civil Action No. 10-C-96 does not preclude this action under 33 U.S.C. § 1365(b)(1)(B) or 30 U.S.C. § 1270(b)(1)(B).

120. Through Civil Action No. 10-C-96, WVDEP has attempted to achieve through the judicial process precisely what US EPA prohibited it from doing through the permitting process.

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**WV/NPDES Permit Number WV1017225**

121. At all relevant times, Hobet has held WV/NPDES Permit Number WV1017225 to regulate water pollution from its Berry Branch Deep Mine.

122. At all relevant times, Hobet has held WVSCMRA Permit U500798 for its Berry Branch Deep Mine Operation.

123. As reissued by WVDEP in 2009, WV/NPDES Permit Number WV1017225 set limits on the concentrations of selenium that Hobet can discharge into Berry Branch of the Mud River from Outfall 004 that became effective on June 3, 2010. That waterway is a navigable water of the United States.

124. The DMRs that Hobet submitted to WVDEP for Outfall 004 reveal that Hobet has accrued at least 224 days of violation of the selenium limits on those outfalls by violating either the daily maximum or monthly average final effluent limitations for selenium on 21 occasions since June 3, 2010. Those violations are set out in Appendix F to this Complaint.

125. On the basis of Hobet's violations of its effluent limitations in WV/NPDES Permit Number WV1017225 and the absence of any evidence of any meaningful efforts by Hobet to eradicate the cause of the violations, Plaintiffs allege that Hobet is in continuing and/or intermittent violation of the Clean Water Act and SMCRA.

**WV/NPDES Permit WV0099392**

126. At all relevant times, Hobet has held WV/NPDES Permit Number WV0099392 to regulate water pollution from its H-21 Surface Mine Operation.

127. At all relevant times, Hobet has held WVSCMRA Permits S003285, S508088,

S502689, S502991, and S501692 for its H-21 Surface Mine Operation.

128. WV/NPDES Permit Number WV0099392 places limits on the concentrations of selenium that Hobet can discharge into Horse Creek from Outfalls 004 and 040; into Stanley Fork of the Upper Mud River from Outfalls 014, 015, 027, 028, 045, and 046; into Mud River from Outfalls 034 and 045; into Sugartree Branch of the Upper Mud River from Outfalls 037, 077, and 079; into Jack Smith Branch of the Lower Little Coal River from Outfall 038; and into Berry Branch of the Upper Mud River from Outfall 084. Each of those waterways is a navigable water of the United States.

129. The DMRs that Hobet submitted to WVDEP for Outfalls 004, 014, 015, 027, 028, 034, 035, 037, 038, 040, 045, 046, 077, 079, and 084 reveal that Hobet has accrued at least 2,805 days of violation of the selenium limits on those outfalls by violating either the daily maximum or monthly average final effluent limitations for selenium on 196 occasions since April 5, 2010. Those violations are set out in Appendix G to this Complaint.

130. On the basis of Hobet's violations of its effluent limitations in WV/NPDES Permit Number WV0099392 and the absence of any evidence of any meaningful efforts by Hobet to eradicate the cause of the violations, Plaintiffs allege that Hobet is in continuing and/or intermittent violation of the Clean Water Act and SMCRA.

**WV/NPDES Permit Number WV1016776**

131. At all relevant times, Hobet has held WV/NPDES Permit Number WV1016776 to regulate water pollution from its West Ridge Surface Mine.

132. At all relevant times, Hobet has held WVSCMRA Permit S500396 for its West



Ridge Surface Mine.

133. WV/NPDES Permit Number WV1016776 places limits on the concentrations of pollutants that Hobet can discharge into Connelly Branch of the Upper Mud River from Outfall 001; into Mud River from Outfalls 002, 003, 007, 041, and 050; and into Lukey Fork of the Upper Mud River from Outfalls 004 and 006. Each of those waterways is a navigable water of the United States.

134. The DMRs that Hobet submitted to WVDEP for Outfalls 001, 002, 003, 004, 006, 007, 041, and 050 reveal that Hobet has accrued at least 1,266 days of violation of the selenium limits on those outfalls by violating either the daily maximum or monthly average final effluent limitations for selenium on 107 occasions since April 5, 2010. Those violations are set out in Appendix H to this Complaint.

135. On the basis of Hobet's violations of its effluent limitations in WV/NPDES Permit Number WV1016776 and the absence of any evidence of any meaningful efforts by Hobet to eradicate the cause of the violations, Plaintiffs allege that Hobet is in continuing and/or intermittent violation of the Clean Water Act and SMCRA.

**WV/NPDES Permit Number WV1020889**

136. At all relevant times, Hobet has held WV/NPDES Permit Number WV1020889 to regulate water pollution from its Westridge No. 3 Surface Mine.

137. At all relevant times, Hobet has held WVSCMRA Permit S500203 for its Westridge No. 3 Mine.

138. WV/NPDES Permit Number WV1020889 places limits on the concentrations of

pollutants that Hobet can discharge into the Mud River, a navigable water of the United States, from Outfalls 001 and 003.

139. The DMRs that Hobet submitted to WVDEP for Outfalls 001 and 003 reveal that Hobet has accrued at least 505 days of violation of the selenium limits on those outfalls by violating either the daily maximum or monthly average final effluent limitations for selenium on 40 occasions since April 5, 2010. Those violations are set out in Appendix I to this Complaint.

140. On the basis of Hobet's violations of its effluent limitations in WV/NPDES Permit Number WV1020889 and the absence of any evidence of any meaningful efforts by Hobet to eradicate the cause of the violations, Plaintiffs allege that Hobet is in continuing and/or intermittent violation of the Clean Water Act and SMCRA.

**WV/NPDES Permit Number WV1021028**

141. At all relevant times, Hobet has held WV/NPDES Permit Number WV1021028 to regulate water pollution from its Westridge No. 1 Mine.

142. At all relevant times, Hobet has held WVSCMRA Permit S500404 for its Westridge No. 1 Mine.

143. WV/NPDES Permit Number WV1021028 places limits on the concentrations of pollutants that Hobet can discharge into Lukey Fork of the Mud River, a navigable water of the United States, from Outfall 006.

144. The DMRs that Hobet submitted to WVDEP for Outfall 006 reveal that Hobet has accrued at least 284 days of violation of the selenium limits on those outfalls by violating either the daily maximum or monthly average final effluent limitations for selenium on 22 occasions

since April 5, 2010. Those violations are set out in Appendix J to this Complaint.

145. On the basis of Hobet's violations of its effluent limitations in WV/NPDES Permit Number WV1021028 and the absence of any evidence of any meaningful efforts by Hobet to eradicate the cause of the violations, Plaintiffs allege that Hobet is in continuing and/or intermittent violation of the Clean Water Act and SMCRA.

**Civil Action No. 3:08-cv-0088**

146. On February 7, 2008, OVEC and WVHC commenced Civil Action No. 3:08-cv-0088 in this Court against Hobet, alleging violations of the selenium limitations in WV/NPDES Permits WV0099392, WV1016776, WV1020889, and WV1021028 and that WVDEP was not diligently prosecuting a civil action in the Boone County Circuit Court (Civ. No. 07-C-3) that it had commenced against Hobet for the same violations.

147. On September 5, 2008, the Boone County Circuit Court entered a consent decree in Civ. No. 07-C-3.

148. On December 18, 2008, this Court concluded that, although WVDEP had not diligently prosecuted the Boone County Circuit Court action against Hobet, the September 5, 2008 consent decree had the effect of mooted OVEC's and WVHC's claims for injunctive relief in Civil Action No. 3:08-cv-0088. Ohio Valley Env'tl. Coalition, Inc. v. Hobet Mining, LLC, 2008 WL 5377799 (S.D. W. Va. Dec. 18, 2008).

149. Subsequent to the December 18, 2008 ruling, the Court entered a Consent Decree in Civil Action No. 3:08-cv-0088 that resolved OVEC's and WVHC's claims for civil penalties against Hobet for violations of the selenium limits in WV/NPDES Permits WV0099392,

WV1016776, WV1020889, and WV1021028 through April 4, 2010. By its express terms, that Consent Decree terminated on April 19, 2010.

150. In December 2009, Hobet and WVDEP colluded to obtain a Modified Settlement and Consent Order in the Boone County Circuit Court action relating to Hobet's WV/NPDES Permits WV0099392, WV1016776, WV1020889, and WV1021028.

151. This Court concluded in July 2010 that the Modified Settlement and Consent Order was not diligently prosecuted and leaves a realistic prospect of future violations. Ohio Valley Env'tl. Coalition Inc., v. Hobet Mining, LLC, 723 F. Supp. 2d 886 (S.D. W. Va. 2010).

**Civ. No. 3:10-cv-847**

152. On or about June 18, 2010, Plaintiffs commenced an action (Civil Action No. 3:10-cv-847) against Defendants Catenary and Hobet in this Court, raising many of the same claims alleged in this Complaint.

153. Pursuant to a settlement agreement between Defendant Patriot and Plaintiffs dated October 22, 2010, the parties to Civil Action No. 3:10-cv-847 agreed to, among other things, the dismissal of that action without prejudice. See Appendix K to this Complaint.

154. On or about November 11, 2010, the parties to Civil Action No. 3:10-cv-847 filed a stipulation of dismissal with the Court pursuant to FRCP 41(a)(1)(A)(ii).

155. The October 22, 2010 settlement agreement that resulted in the dismissal without prejudice of Civil Action No. 3:10-cv-847 specifically authorizes Plaintiffs to file a new action for the claims at issue in Civil Action No. 3:10-cv-847 as well as the additional claims in this Complaint on February 18, 2011. See Appendix K to this Complaint at ¶ 14.

**Plaintiffs' 60-Day Notice Letter**

156. Plaintiffs sent a notice of intent letter (hereinafter, "NOI"), postmarked on December 17, 2010, to all Defendants.

157. The NOI notified Apogee that its discharges of selenium, its violations of Compliance Order No. 493, and its violations of the effluent limitations in WV/NPDES Permit WV0099520 violate the Clean Water Act and SMCRA.

158. The NOI notified Catenary that its discharges of selenium, its violations of Orders No. 198, 199, and 775 and Amended Order No. 1, and its violations of the effluent limitations in WV/NPDES Permits WV0093751, WV0096920, WV0096962, and WV1014684 violate the Clean Water Act and SMCRA.

159. The NOI notified Hobet that its discharges of selenium and its violations of the effluent limitations in WV/NPDES Permits WV0099392, WV1016776, WV1017225, WV1020889, and WV1021028 violate the Clean Water Act and SMCRA.

160. The NOI also notified Defendants of Plaintiffs' intent to sue Defendants for those violations at the end of the 60-day period required by statute.

161. The NOI was sent by certified mail, return receipt requested, to the following persons: Richard M. Whiting, President and Chief Executive Officer, Patriot Coal Corporation; Kent Desrocher, General Manager, Apogee Coal Company, LLC; Tom Chapman, General Manager, Catenary Coal Company, LLC; Kent Desrocher, General Manager, Hobet Mining, LLC; Secretary Randy Huffman, WVDEP; Shawn M. Garvin, Regional Administrator of EPA Region III; Lisa P. Jackson, Administrator of EPA; Ken Salazar, Secretary of the United States

Department of Interior; Joseph Pizarchik, Director of the Office of Surface Mining Reclamation and Enforcement; and CT Corporation System, Registered Agent for Patriot Coal Corporation, Apogee Coal Company, LLC, Catenary Coal Company, LLC, and Hobet Mining, LLC. The NOI was also sent to the Regional Director for the Appalachian Region of the Office of Surface Mining Enforcement and Reclamation via first class mail, postage prepaid.

**FIRST CLAIM FOR RELIEF**

(Clean Water Act Violations of WV/NPDES Permit Number WV0099520)

162. Plaintiffs incorporate by reference all allegations contained in paragraphs 1 through 161 supra.

163. Apogee's wastewater discharges identified in the above paragraphs are discharges from a point source or sources into navigable waters of the United States within the meaning of Section 301 of the Clean Water Act, which prohibits the discharge of any pollutant by any person, except in compliance with a permit. 33 U.S.C. § 1311.

164. The selenium limits in WV/NPDES Permit Number WV0099520 are "effluent standards or limitations" for purposes of section 505(a)(1) of the Clean Water Act because they are a condition of a permit issued under section 402 of the Act. 33 U.S.C. § 1365(f).

165. Each and every discharge in excess of the effluent limitations in WV/NPDES Permit Number WV0099520 is actionable under section 505(a)(1) of the Clean Water Act. 33 U.S.C. § 1365(a)(1).

166. A violation of an average monthly effluent limitation in a permit is considered to be a violation on each and every day of that month.

167. Apogee's DMRs establish that Apogee has violated either the monthly average or

daily maximum effluent limitation for selenium on in WV/NPDES Permit WV0099520 on 29 occasions since those limitations went into effect on April 5, 2010. Those 29 occasions, detailed in Appendix A, amount to 190 days of violation.

168. Unless enjoined, Apogee will remain in continuing violation of the Clean Water Act.

169. On information and belief, Plaintiffs allege that Apogee is in continuing and/or intermittent violation of the Clean Water Act as a result of its violations of the effluent limitations in WV/NPDES Permit Number WV0099520 because Apogee has taken no meaningful action to eradicate the underlying cause of the violations.

170. Pursuant to Section 309(d) of the CWA, 33 U.S.C. § 1319(d), Apogee is liable for civil penalties of up to \$37,500 per day of violation for its violations of the effluent limitations in WV/NPDES Permit Number WV0099520.

**SECOND CLAIM FOR RELIEF**  
(Violations of Order No. 493)

171. Plaintiffs incorporate by reference all allegations contained in paragraphs 1 through 170 supra.

172. Order No. 493 that Apogee received from WVDEP constitutes an “order issued by the Administrator or a State with respect to [effluent] standard[s] or limitation[s]” for purposes of Section 505(a)(1) of the CWA and, hence, violations of Order No. 493 are actionable in a Clean Water Act citizen suit.

173. Apogee’s failure to commence construction of selenium treatment facilities on Outfalls 001 and 011 of WV/NPDES Permit WV0099520 by October 5, 2008, is a violation of

the terms of Order No. 493.

174. Apogee is in ongoing violation of the requirement that it commence construction of selenium treatment facilities on Outfalls 001 and 011 of WV/NPDES Permit WV0099520 by October 5, 2008.

175. Apogee's failure to complete construction of selenium treatment facilities on Outfalls 001 and 011 of WV/NPDES Permit WV0099520 by April 5, 2010, is a violation of the terms of Order No. 493.

176. As of December 31, 2010, Apogee had accrued at least 373 days of violation of the selenium limits on Outfalls 001 and 011.

177. Apogee is in ongoing violation of the requirement that it comply with the selenium limits on Outfalls 001 and 011 by April 5, 2010.

178. Apogee is in ongoing violation of the requirement that it complete installation of a selenium treatment system for Outfalls 001 and 011 of WV/NPDES Permit WV0099520 by April 5, 2010.

179. Unless enjoined, Apogee will remain in continuing violation of Order No. 493.

**THIRD CLAIM FOR RELIEF**

(SMCRA Violations Related to WV/NPDES Permit Number WV0099520)

180. Plaintiffs incorporate by reference all allegations contained in paragraphs 1 through 179 supra.

181. Section 520(a) of SMCRA, 30 U.S.C. § 1270(a), allows citizen suits in federal court against any "person who is alleged to be in violation of any rule, regulation, order or permit issued pursuant to this subchapter."



182. As discussed above, federal and state regulations under SMCRA include performance standards that (1) prohibit surface mining operations that cause violations of effluent standards in Clean Water Act permits and (2) prohibit operations from causing material damage to the hydrologic balance outside of the permit area.

183. Under 38 C.S.R. § 2-3.33.c, all performance standards are incorporated as conditions in permits issued under the State Act.

184. WV/NPDES Permit Number WV0099520 regulates Apogee's discharges from its East Ruffner Complex (WVSCMRA Permit Nos. S007585 and S507986).

185. Plaintiffs allege that Apogee has violated the effluent limitations in WV/NPDES Permit WV0099520 on 29 occasions since April 5, 2010.

186. Consequently, Apogee has accrued 373 days of violation of the performance standards incorporated in the regulations under SMCRA.

187. Because those performance standards are permit conditions, Apogee is also in violation of the terms and conditions of WVSCMRA Permits S007585 and S507986.

188. Unless enjoined, Apogee will remain in ongoing and continuing violation of SMCRA.

189. On information and belief, Plaintiffs allege that Apogee is in continuing and/or intermittent violation of SMCRA as a result of its violations of the effluent limitations in WV/NPDES Permit Number WV0099520 because Apogee has taken no meaningful action to eradicate the underlying cause of the violations.

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**FOURTH CLAIM FOR RELIEF**

(Clean Water Act Violations of WV/NPDES Permit Number WV0093751)

190. Plaintiffs incorporate by reference all allegations contained in paragraphs 1 through 189 supra.

191. Catenary's wastewater discharges identified in the above paragraphs are discharges from a point source or sources into navigable waters of the United States within the meaning of Section 301 of the Clean Water Act, which prohibits the discharge of any pollutant by any person, except in compliance with a permit. 33 U.S.C. § 1311.

192. The selenium limits in WV/NPDES Permit Number WV0093751 are "effluent standards or limitations" for purposes of section 505(a)(1) of the Clean Water Act because they are a condition of a permit issued under section 402 of the Act. 33 U.S.C. § 1365(f).

193. Each and every discharge in excess of the effluent limitations in WV/NPDES Permit Number WV0093751 is actionable under section 505(a)(1) of the Clean Water Act. 33 U.S.C. § 1365(a)(1).

194. A violation of an average monthly effluent limitation in a permit is considered to be a violation on each and every day of that month.

195. Catenary's DMRs establish that Catenary has violated either the monthly average or daily maximum effluent limitation for selenium on in WV/NPDES Permit WV0093751 on 70 occasions since those limitations went into effect on January 9, 2010. Those 70 occasions, detailed in Appendix B, amount to 931 days of violation.

196. Unless enjoined, Catenary will remain in continuing violation of the Clean Water Act.

197. On information and belief, Plaintiffs allege that Catenary is in continuing and/or intermittent violation of the Clean Water Act as a result of its violations of the effluent limitations in WV/NPDES Permit Number WV0093751 because Catenary has taken no meaningful action to eradicate the underlying cause of the violations.

198. Pursuant to Section 309(d) of the CWA, 33 U.S.C. § 1319(d), Catenary is liable for civil penalties of up to \$37,500 per day of violation for its violations of the effluent limitations in WV/NPDES Permit Number WV0093751.

**FIFTH CLAIM FOR RELIEF**  
(Violations of Order No. 198)

199. Plaintiffs incorporate by reference all allegations contained in paragraphs 1 through 198 supra.

200. Order No. 198 that Catenary received from WVDEP constitutes an “order issued by the Administrator or a State with respect to [effluent] standard[s] or limitation[s]” for purposes of Section 505(a)(1) of the CWA and, hence, violations of Order No. 198 are actionable in a Clean Water Act citizen suit.

201. Catenary’s failure to commence construction of selenium treatment facilities on Outfalls 003, 005, and 026 of WV/NPDES Permit WV0093751 by January 9, 2009, is a violation of the terms of Order No. 198.

202. Catenary is in ongoing violation of the requirement that it commence construction of selenium treatment facilities on Outfalls 003, 005, and 026 of WV/NPDES Permit WV0093751 by January 9, 2009.

203. Catenary’s failure to complete construction of selenium treatment facilities on

Outfalls 003, 005, and 026 of WV/NPDES Permit WV0093751 by January 9, 2010, is a violation of the terms of Order No. 198.

204. As of December 31, 2010, Catenary had accrued at least 931 days of violation of the selenium limits on Outfalls 003, 005, and 026.

205. Catenary is in ongoing violation of the requirement that it complete installation of a selenium treatment system for Outfalls 003, 005, and 026 of WV/NPDES Permit WV0093751 by January 9, 2010.

206. Unless enjoined, Catenary will remain in continuing violation of Order No. 198.

**SIXTH CLAIM FOR RELIEF**

(SMCRA Violations Related to WV/NPDES Permit Number WV0093751)

207. Plaintiffs incorporate by reference all allegations contained in paragraphs 1 through 206 supra.

208. Section 520(a) of SMCRA, 30 U.S.C. § 1270(a), allows citizen suits in federal court against any “person who is alleged to be in violation of any rule, regulation, order or permit issued pursuant to this subchapter.”

209. As discussed above, federal and state regulations under SMCRA include performance standards that (1) prohibit surface mining operations that cause violations of effluent standards in Clean Water Act permits and (2) prohibit operations from causing material damage to the hydrologic balance outside of the permit area.

210. Under 38 C.S.R. § 2-3.33.c, all performance standards are incorporated as conditions in permits issued under the State Act.

211. WV/NPDES Permit Number WV0093751 regulates Catenary’s discharges from

its Samples Mine Complex (WVSCMRA Permit Nos. O301793 and S601287).

212. Plaintiffs allege that Catenary has violated the effluent limitations in WV/NPDES Permit WV0093751 on 70 occasions since January 9, 2010.

213. Consequently, Catenary has accrued 931 days of violation of the performance standards incorporated in the regulations under SMCRA.

214. Because those performance standards are permit conditions, Catenary is also in violation of the terms and conditions of WVSCMRA Permits O301793 and S601287.

215. Unless enjoined, Catenary will remain in ongoing and continuing violation of SMCRA.

216. On information and belief, Plaintiffs allege that Catenary is in continuing and/or intermittent violation of SMCRA as a result of its violations of the effluent limitations in WV/NPDES Permit Number WV0093751 because Catenary has taken no meaningful action to eradicate the underlying cause of the violations.

**SEVENTH CLAIM FOR RELIEF**

(Clean Water Act Violations of WV/NPDES Permit Number WV0096920)

217. Plaintiffs incorporate by reference all allegations contained in paragraphs 1 through 216 supra.

218. Catenary's wastewater discharges identified in the above paragraphs are discharges from a point source or sources into navigable waters of the United States within the meaning of Section 301 of the Clean Water Act, which prohibits the discharge of any pollutant by any person, except in compliance with a permit. 33 U.S.C. § 1311.

219. The selenium limits in WV/NPDES Permit Number WV0096920 are "effluent

standards or limitations” for purposes of section 505(a)(1) of the Clean Water Act because they are a condition of a permit issued under section 402 of the Act. 33 U.S.C. § 1365(f).

220. Each and every discharge in excess of the effluent limitations in WV/NPDES Permit Number WV0096920 is actionable under section 505(a)(1) of the Clean Water Act. 33 U.S.C. § 1365(a)(1).

221. A violation of an average monthly effluent limitation in a permit is considered to be a violation on each and every day of that month.

222. Catenary’s DMRs establish that Catenary has violated either the monthly average or daily maximum effluent limitation for selenium on in WV/NPDES Permit WV0096920 on 30 occasions since those limitations went into effect on January 23, 2010. Those 30 occasions, detailed in Appendix C, amount to 361 days of violation.

223. Unless enjoined, Catenary will remain in continuing violation of the Clean Water Act.

224. On information and belief, Plaintiffs allege that Catenary is in continuing and/or intermittent violation of the Clean Water Act as a result of its violations of the effluent limitations in WV/NPDES Permit Number WV0096920 because Catenary has taken no meaningful action to eradicate the underlying cause of the violations.

225. Pursuant to Section 309(d) of the CWA, 33 U.S.C. § 1319(d), Catenary is liable for civil penalties of up to \$37,500 per day of violation for its violations of the effluent limitations in WV/NPDES Permit Number WV0096920.

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**EIGHTH CLAIM FOR RELIEF**

(Violations of Order No. 199)

226. Plaintiffs incorporate by reference all allegations contained in paragraphs 1 through 225 supra.

227. Order No. 199 that Catenary received from WVDEP constitutes an “order issued by the Administrator or a State with respect to [effluent] standard[s] or limitation[s]” for purposes of Section 505(a)(1) of the CWA and, hence, violations of Order No. 199 are actionable in a Clean Water Act citizen suit.

228. Catenary’s failure to submit treatment plans for selenium on Outfall 001 of WV/NPDES Permit WV0096920 by October 31, 2007, is a violation of the terms of Order No. 199.

229. Catenary is in ongoing violation of the requirement that it submit a plan for and commence construction of selenium treatment facilities on Outfall 001 of WV/NPDES Permit WV0096920 by October 31, 2007.

230. Catenary’s failure to complete construction of selenium treatment facilities on Outfall 001 of WV/NPDES Permit WV0096920 by October 31, 2009, is a violation of the terms of Order No. 199.

231. Catenary is in ongoing violation of the requirement that it complete installation of a selenium treatment system for Outfall 001 of WV/NPDES Permit WV0096920 by October 31, 2009.

232. Catenary’s failure to achieve compliance with the final selenium limits on Outfall 001 of WV/NPDES Permit WV0096920 set out in Attachment A to Order No. 199 by January

22, 2010 is a violation of the terms of Order No. 199.

233. As of December 31, 2010, Catenary had accrued at least 361 days of violation of the selenium limits on Outfall 001.

234. Catenary is in ongoing violation of the requirement that it achieve compliance with the final selenium limits on Outfall 001 of WV/NPDES Permit WV0096920 set out in Attachment A to Order No. 199 by January 22, 2010.

235. Unless enjoined, Catenary will remain in continuing violation of Order No. 199.

**NINTH CLAIM FOR RELIEF**

(SMCRA Violations Related to WV/NPDES Permit Number WV0096920)

236. Plaintiffs incorporate by reference all allegations contained in paragraphs 1 through 235 supra.

237. Section 520(a) of SMCRA, 30 U.S.C. § 1270(a), allows citizen suits in federal court against any “person who is alleged to be in violation of any rule, regulation, order or permit issued pursuant to this subchapter.”

238. As discussed above, federal and state regulations under SMCRA include performance standards that (1) prohibit surface mining operations that cause violations of effluent standards in Clean Water Act permits and (2) prohibit operations from causing material damage to the hydrologic balance outside of the permit area.

239. Under 38 C.S.R. § 2-3.33.c, all performance standards are incorporated as conditions in permits issued under the State Act.

240. WV/NPDES Permit Number WV0096920 regulates Catenary’s discharges from its Samples Mine Complex-Cabin Creek No. 2 Surface Mine (WVSCMRA Permit No.



S302390).

241. Plaintiffs allege that Catenary has violated the effluent limitations in WV/NPDES Permit WV00969620 on 30 occasions since January 23, 2010.

242. Consequently, Catenary has accrued 361 days of violation of the performance standards incorporated in the regulations under SMCRA.

243. Because those performance standards are permit conditions, Catenary is also in violation of the terms and conditions of WVSCMRA Permit S302390.

244. Unless enjoined, Catenary will remain in ongoing and continuing violation of SMCRA.

245. On information and belief, Plaintiffs allege that Catenary is in continuing and/or intermittent violation of SMCRA as a result of its violations of the effluent limitations in WV/NPDES Permit Number WV0096920 because Catenary has taken no meaningful action to eradicate the underlying cause of the violations.

**TENTH CLAIM FOR RELIEF**

(Clean Water Act Violations of WV/NPDES Permit Number WV0096962)

246. Plaintiffs incorporate by reference all allegations contained in paragraphs 1 through 245 supra.

247. Catenary's wastewater discharges identified in the above paragraphs are discharges from a point source or sources into navigable waters of the United States within the meaning of Section 301 of the Clean Water Act, which prohibits the discharge of any pollutant by any person, except in compliance with a permit. 33 U.S.C. § 1311.

248. The selenium limits in WV/NPDES Permit Number WV0096962 are "effluent

standards or limitations” for purposes of section 505(a)(1) of the Clean Water Act because they are a condition of a permit issued under section 402 of the Act. 33 U.S.C. § 1365(f).

249. Each and every discharge in excess of the effluent limitations in WV/NPDES Permit Number WV0096962 is actionable under section 505(a)(1) of the Clean Water Act. 33 U.S.C. § 1365(a)(1).

250. A violation of an average monthly effluent limitation in a permit is considered to be a violation on each and every day of that month.

251. Catenary’s DMRs establish that Catenary has violated either the monthly average or daily maximum effluent limitation for selenium on in WV/NPDES Permit WV0096962 on 132 occasions since those limitations went into effect on April 6, 2010. Those 132 occasions, detailed in Appendix D, amount to 1,437 days of violation.

252. Unless enjoined, Catenary will remain in continuing violation of the Clean Water Act.

253. On information and belief, Plaintiffs allege that Catenary is in continuing and/or intermittent violation of the Clean Water Act as a result of its violations of the effluent limitations in WV/NPDES Permit Number WV0096962 because Catenary has taken no meaningful action to eradicate the underlying cause of the violations.

254. Pursuant to Section 309(d) of the CWA, 33 U.S.C. § 1319(d), Catenary is liable for civil penalties of up to \$37,500 per day of violation for its violations of the effluent limitations in WV/NPDES Permit Number WV0096962.

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**ELEVENTH CLAIM FOR RELIEF**  
(Violations of Order No. 775)

255. Plaintiffs incorporate by reference all allegations contained in paragraphs 1 through 254 supra.

256. Order No. 775 that Catenary received from WVDEP constitutes an “order issued by the Administrator or a State with respect to [effluent] standard[s] or limitation[s]” for purposes of Section 505(a)(1) of the CWA and, hence, violations of Order No. 775 are actionable in a Clean Water Act citizen suit.

257. Catenary’s failure to commence construction of selenium treatment facilities on Outfalls 001, 042, 044, 055, and 056 of WV/NPDES Permit WV0096962 by October 5, 2008, is a violation of the terms of Order No. 775.

258. Catenary is in ongoing violation of the requirement that it commence construction of selenium treatment facilities on Outfalls 001, 042, 044, 055, and 056 of WV/NPDES Permit WV0096962 by October 5, 2008.

259. Catenary’s failure to complete construction of selenium treatment facilities on Outfalls 001, 042, 044, 055, and 056 of WV/NPDES Permit WV0096962 by April 5, 2010, is a violation of the terms of Order No. 775.

260. As of December 31, 2010, Catenary had accrued at least 1,437 days of violation of the selenium limits on Outfalls 001, 042, 044, 055, and 056.

261. Catenary is in ongoing violation of the requirement that it complete installation of a selenium treatment system for Outfalls 001, 042, 044, 055, and 056 of WV/NPDES Permit WV0096962 by April 5, 2010.

262. Unless enjoined, Catenary will remain in continuing violation of Order No. 775.

**TWELFTH CLAIM FOR RELIEF**

(SMCRA Violations Related to WV/NPDES Permit Number WV0096962)

263. Plaintiffs incorporate by reference all allegations contained in paragraphs 1 through 262 supra.

264. Section 520(a) of SMCRA, 30 U.S.C. § 1270(a), allows citizen suits in federal court against any “person who is alleged to be in violation of any rule, regulation, order or permit issued pursuant to this subchapter.”

265. As discussed above, federal and state regulations under SMCRA include performance standards that (1) prohibit surface mining operations that cause violations of effluent standards in Clean Water Act permits and (2) prohibit operations from causing material damage to the hydrologic balance outside of the permit area.

266. Under 38 C.S.R. § 2-3.33.c, all performance standards are incorporated as conditions in permits issued under the State Act.

267. WV/NPDES Permit Number WV0096962 regulates Catenary’s discharges from its Samples Mine Complex (WVSCMRA Permit Nos. S302490, S300495, and S301000).

268. Plaintiffs allege that Catenary has violated the effluent limitations in WV/NPDES Permit WV0096962 on 132 occasions since April 6, 2010.

269. Consequently, Catenary has committed 1,437 violations of the performance standards incorporated in the regulations under SMCRA.

270. Because those performance standards are permit conditions, Catenary is also in violation of the terms and conditions of WVSCMRA Permits S302490, S300495, and S301000.

271. Unless enjoined, Catenary will remain in ongoing and continuing violation of SMCRA.

272. On information and belief, Plaintiffs allege that Catenary is in continuing and/or intermittent violation of SMCRA as a result of its violations of the effluent limitations in WV/NPDES Permit Number WV0096962 because Catenary has taken no meaningful action to eradicate the underlying cause of the violations.

**THIRTEENTH CLAIM FOR RELIEF**

(Clean Water Act Violations of WV/NPDES Permit Number WV1014684)

273. Plaintiffs incorporate by reference all allegations contained in paragraphs 1 through 272 supra.

274. Catenary's wastewater discharges identified in the above paragraphs are discharges from a point source or sources into navigable waters of the United States within the meaning of Section 301 of the Clean Water Act, which prohibits the discharge of any pollutant by any person, except in compliance with a permit. 33 U.S.C. § 1311.

275. The selenium limits in WV/NPDES Permit Number WV1014684 are "effluent standards or limitations" for purposes of section 505(a)(1) of the Clean Water Act because they are a condition of a permit issued under section 402 of the Act. 33 U.S.C. § 1365(f).

276. Each and every discharge in excess of the effluent limitations in WV/NPDES Permit Number WV1014684 is actionable under section 505(a)(1) of the Clean Water Act. 33 U.S.C. § 1365(a)(1).

277. A violation of an average monthly effluent limitation in a permit is considered to be a violation on each and every day of that month.

278. Catenary's DMRs establish that Catenary has violated either the monthly average or daily maximum effluent limitation for selenium on in WV/NPDES Permit WV1014684 on 105 occasions since those limitations went into effect on April 6, 2010. Those 105 occasions, detailed in Appendix E, amount to 1,149 days of violation.

279. Unless enjoined, Catenary will remain in continuing violation of the Clean Water Act.

280. On information and belief, Plaintiffs allege that Catenary is in continuing and/or intermittent violation of the Clean Water Act as a result of its violations of the effluent limitations in WV/NPDES Permit Number WV1014684 because Catenary has taken no meaningful action to eradicate the underlying cause of the violations.

281. Pursuant to Section 309(d) of the CWA, 33 U.S.C. § 1319(d), Catenary is liable for civil penalties of up to \$37,500 per day of violation for its violations of the effluent limitations in WV/NPDES Permit Number WV1014684.

**FOURTEENTH CLAIM FOR RELIEF**  
(Violations of Amended Order No. 1)

282. Plaintiffs incorporate by reference all allegations contained in paragraphs 1 through 281 supra.

283. Amended Order No. 1 that Catenary received from WVDEP constitutes an "order issued by the Administrator or a State with respect to [effluent] standard[s] or limitation[s]" for purposes of Section 505(a)(1) of the CWA and, hence, violations of Amended Order No. 1 are actionable in a Clean Water Act citizen suit.

284. Catenary's failure to commence construction of selenium treatment facilities on

Outfalls 001, 002, 003, and 006 of WV/NPDES Permit WV1014684 by October 5, 2008, is a violation of the terms of Amended Order No. 1.

285. Catenary is in ongoing violation of the requirement that it commence construction of selenium treatment facilities on Outfalls 001, 002, 003, and 006 of WV/NPDES Permit WV1014684 by October 5, 2008.

286. Catenary's failure to complete construction of selenium treatment facilities on Outfalls 001, 002, 003, and 006 of WV/NPDES Permit WV1014684 by April 5, 2010, is a violation of the terms of Amended Order No. 1.

287. As of December 31, 2010, Catenary had accrued at least 1,149 days of violation of the selenium limits on Outfalls 001, 002, 003, and 006.

288. Catenary is in ongoing violation of the requirement that it complete installation of a selenium treatment system for Outfalls 001, 002, 003, and 006 of WV/NPDES Permit WV1014684 by April 5, 2010.

289. Unless enjoined, Catenary will remain in continuing violation of Amended Order No. 1.

#### **FIFTEENTH CLAIM FOR RELIEF**

(SMCRA Violations Related to WV/NPDES Permit Number WV1014684)

290. Plaintiffs incorporate by reference all allegations contained in paragraphs 1 through 289 supra.

291. Section 520(a) of SMCRA, 30 U.S.C. § 1270(a), allows citizen suits in federal court against any "person who is alleged to be in violation of any rule, regulation, order or permit issued pursuant to this subchapter."

292. As discussed above, federal and state regulations under SMCRA include performance standards that (1) prohibit surface mining operations that cause violations of effluent standards in Clean Water Act permits and (2) prohibit operations from causing material damage to the hydrologic balance outside of the permit area.

293. Under 38 C.S.R. § 2-3.33.c, all performance standards are incorporated as conditions in permits issued under the State Act.

294. WV/NPDES Permit Number WV1014684 regulates Catenary's discharges from its Stanley Heritage Surface Mine (WVSCMRA Permit No. S303593).

295. Plaintiffs allege that Catenary has violated the effluent limitations in WV/NPDES Permit WV1014684 on 105 occasions since April 6, 2010.

296. Consequently, Catenary has committed one or more violations of the performance standards incorporated in the regulations under SMCRA.

297. Because those performance standards are permit conditions, Catenary is also in violation of the terms and conditions of WVSCMRA Permit S303593.

298. Unless enjoined, Catenary will remain in ongoing and continuing violation of SMCRA.

299. On information and belief, Plaintiffs allege that Catenary is in continuing and/or intermittent violation of SMCRA as a result of its violations of the effluent limitations in WV/NPDES Permit Number WV1014684 because Catenary has taken no meaningful action to eradicate the underlying cause of the violations.

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**SIXTEENTH CLAIM FOR RELIEF**

(Clean Water Act Violations of WV/NPDES Permit Number WV1017225)

300. Plaintiffs incorporate by reference all allegations contained in paragraphs 1 through 299 supra.

301. Hobet's wastewater discharges identified in the above paragraphs are discharges from a point source or sources into navigable waters of the United States within the meaning of Section 301 of the Clean Water Act, which prohibits the discharge of any pollutant by any person, except in compliance with a permit. 33 U.S.C. § 1311.

302. The selenium limits in WV/NPDES Permit Number WV1017225 are "effluent standards or limitations" for purposes of section 505(a)(1) of the Clean Water Act because they are a condition of a permit issued under section 402 of the Act. 33 U.S.C. § 1365(f).

303. Each and every discharge in excess of the effluent limitations in WV/NPDES Permit Number WV1017225 is actionable under section 505(a)(1) of the Clean Water Act. 33 U.S.C. § 1365(a)(1).

304. A violation of an average monthly effluent limitation in a permit is considered to be a violation on each and every day of that month.

305. Hobet's DMRs establish that Hobet has violated either the monthly average or daily maximum effluent limitation for selenium on in WV/NPDES Permit WV1017225 on 21 occasions since those limitations went into effect on June 3, 2010. Those 21 occasions, detailed in Appendix F, amount to 224 days of violation.

306. Unless enjoined, Hobet will remain in continuing violation of the Clean Water Act.

307. On information and belief, Plaintiffs allege that Hobet is in continuing and/or intermittent violation of the Clean Water Act as a result of its violations of the effluent limitations in WV/NPDES Permit Number WV1017225 because Hobet has taken no meaningful action to eradicate the underlying cause of the violations.

308. Pursuant to Section 309(d) of the CWA, 33 U.S.C. § 1319(d), Hobet is liable for civil penalties of up to \$37,500 per day of violation for its violations of the effluent limitations in WV/NPDES Permit Number WV1017225.

**SEVENTEENTH CLAIM FOR RELIEF**

(SMCRA Violations Related to WV/NPDES Permit Number WV1017225)

309. Plaintiffs incorporate by reference all allegations contained in paragraphs 1 through 308 supra.

310. Section 520(a) of SMCRA, 30 U.S.C. § 1270(a), allows citizen suits in federal court against any “person who is alleged to be in violation of any rule, regulation, order or permit issued pursuant to this subchapter.”

311. As discussed above, federal and state regulations under SMCRA include performance standards that (1) prohibit surface mining operations that cause violations of effluent standards in Clean Water Act permits and (2) prohibit operations from causing material damage to the hydrologic balance outside of the permit area.

312. Under 38 C.S.R. § 2-3.33.c, all performance standards are incorporated as conditions in permits issued under the State Act.

313. WV/NPDES Permit Number WV1017225 regulates Hobet’s discharges from its Berry Branch Deep Mine (WVSCMRA Permit No. U500798).

314. Plaintiffs allege that Hobet has violated the effluent limitations in WV/NPDES Permit WV1017225 on 21 occasions since June 3, 2010.

315. Consequently, Hobet has committed 224 days of violation of the performance standards incorporated in the regulations under SMCRA.

316. Because those performance standards are permit conditions, Hobet is also in violation of the terms and conditions of WVSCMRA Permit U500798.

317. Unless enjoined, Hobet will remain in ongoing and continuing violation of SMCRA.

318. On information and belief, Plaintiffs allege that Hobet is in continuing and/or intermittent violation of SMCRA as a result of its violations of the effluent limitations in WV/NPDES Permit Number WV1017225 because Hobet has taken no meaningful action to eradicate the underlying cause of the violations.

**EIGHTEENTH CLAIM FOR RELIEF**

(Clean Water Act Violations of WV/NPDES Permit Number WV0099392)

319. Plaintiffs incorporate by reference all allegations contained in paragraphs 1 through 318 supra.

320. Hobet's wastewater discharges identified in the above paragraphs are discharges from a point source or sources into navigable waters of the United States within the meaning of Section 301 of the Clean Water Act, which prohibits the discharge of any pollutant by any person, except in compliance with a permit. 33 U.S.C. § 1311.

321. The selenium limits in WV/NPDES Permit Number WV0099392 are "effluent standards or limitations" for purposes of section 505(a)(1) of the Clean Water Act because they

are a condition of a permit issued under section 402 of the Act. 33 U.S.C. § 1365(f).

322. Each and every discharge in excess of the effluent limitations in WV/NPDES Permit Number WV0099392 is actionable under section 505(a)(1) of the Clean Water Act. 33 U.S.C. § 1365(a)(1).

323. A violation of an average monthly effluent limitation in a permit is considered to be a violation on each and every day of that month.

324. Hobet's DMRs establish that Hobet has violated either the monthly average or daily maximum effluent limitation for selenium on in WV/NPDES Permit WV0099392 on 196 occasions since those limitations went into effect on April 5, 2010. Those 196 occasions, detailed in Appendix G, amount to 2,805 days of violation.

325. Unless enjoined, Hobet will remain in continuing violation of the Clean Water Act.

326. On information and belief, Plaintiffs allege that Hobet is in continuing and/or intermittent violation of the Clean Water Act as a result of its violations of the effluent limitations in WV/NPDES Permit Number WV0099392 because Hobet has taken no meaningful action to eradicate the underlying cause of the violations.

327. Pursuant to Section 309(d) of the CWA, 33 U.S.C. § 1319(d), Hobet is liable for civil penalties of up to \$37,500 per day of violation for its violations of the effluent limitations in WV/NPDES Permit Number WV0099392.

**NINETEENTH CLAIM FOR RELIEF**

(SMCRA Violations Related to WV/NPDES Permit Number WV0099392)

328. Plaintiffs incorporate by reference all allegations contained in paragraphs 1

through 327 supra.

329. Section 520(a) of SMCRA, 30 U.S.C. § 1270(a), allows citizen suits in federal court against any “person who is alleged to be in violation of any rule, regulation, order or permit issued pursuant to this subchapter.”

330. As discussed above, federal and state regulations under SMCRA include performance standards that (1) prohibit surface mining operations that cause violations of effluent standards in Clean Water Act permits and (2) prohibit operations from causing material damage to the hydrologic balance outside of the permit area.

331. Under 38 C.S.R. § 2-3.33.c, all performance standards are incorporated as conditions in permits issued under the State Act.

332. WV/NPDES Permit Number WV0099392 regulates Hobet’s discharges from its H-21 Surface Mine Operation (WVSCMRA Permit Nos. S003285, S508088, S502689, S502991, and S501692).

333. Plaintiffs allege that Hobet has violated the effluent limitations in WV/NPDES Permit WV0099392 on 196 occasions since April 5, 2010.

334. Consequently, Hobet has committed one or more violations of the performance standards incorporated in the regulations under SMCRA.

335. Because those performance standards are permit conditions, Hobet is also in violation of the terms and conditions of WVSCMRA Permits S003285, S508088, S502689, S502991, and S501692.

336. Unless enjoined, Hobet will remain in ongoing and continuing violation of

SMCRA.

337. On information and belief, Plaintiffs allege that Hobet is in continuing and/or intermittent violation of SMCRA as a result of its violations of the effluent limitations in WV/NPDES Permit Number WV0099392 because Hobet has taken no meaningful action to eradicate the underlying cause of the violations.

**TWENTIETH CLAIM FOR RELIEF**

(Clean Water Act Violations of WV/NPDES Permit Number WV1016776)

338. Plaintiffs incorporate by reference all allegations contained in paragraphs 1 through 337 supra.

339. Hobet's wastewater discharges identified in the above paragraphs are discharges from a point source or sources into navigable waters of the United States within the meaning of Section 301 of the Clean Water Act, which prohibits the discharge of any pollutant by any person, except in compliance with a permit. 33 U.S.C. § 1311.

340. The selenium limits in WV/NPDES Permit Number WV1016776 are "effluent standards or limitations" for purposes of section 505(a)(1) of the Clean Water Act because they are a condition of a permit issued under section 402 of the Act. 33 U.S.C. § 1365(f).

341. Each and every discharge in excess of the effluent limitations in WV/NPDES Permit Number WV1016776 is actionable under section 505(a)(1) of the Clean Water Act. 33 U.S.C. § 1365(a)(1).

342. A violation of an average monthly effluent limitation in a permit is considered to be a violation on each and every day of that month.

343. Hobet's DMRs establish that Hobet has violated either the monthly average or

daily maximum effluent limitation for selenium on in WV/NPDES Permit WV1016776 on 107 occasions since those limitations went into effect on April 5, 2010. Those 107 occasions, detailed in Appendix H, amount to 1,266 days of violation.

344. Unless enjoined, Hobet will remain in continuing violation of the Clean Water Act.

345. On information and belief, Plaintiffs allege that Hobet is in continuing and/or intermittent violation of the Clean Water Act as a result of its violations of the effluent limitations in WV/NPDES Permit Number WV1016776 because Hobet has taken no meaningful action to eradicate the underlying cause of the violations.

346. Pursuant to Section 309(d) of the CWA, 33 U.S.C. § 1319(d), Hobet is liable for civil penalties of up to \$37,500 per day of violation for its violations of the effluent limitations in WV/NPDES Permit Number WV1016776.

**TWENTY-FIRST CLAIM FOR RELIEF**

(SMCRA Violations Related to WV/NPDES Permit Number WV1016776)

347. Plaintiffs incorporate by reference all allegations contained in paragraphs 1 through 346 supra.

348. Section 520(a) of SMCRA, 30 U.S.C. § 1270(a), allows citizen suits in federal court against any “person who is alleged to be in violation of any rule, regulation, order or permit issued pursuant to this subchapter.”

349. As discussed above, federal and state regulations under SMCRA include performance standards that (1) prohibit surface mining operations that cause violations of effluent standards in Clean Water Act permits and (2) prohibit operations from causing material

damage to the hydrologic balance outside of the permit area.

350. Under 38 C.S.R. § 2-3.33.c, all performance standards are incorporated as conditions in permits issued under the State Act.

351. WV/NPDES Permit Number WV1016776 regulates Hobet's discharges from its West Ridge Surface Mine (WVSCMRA Permit No. S500396).

352. Plaintiffs allege that Hobet has violated the effluent limitations in WV/NPDES Permit WV1016776 on 107 occasions since April 5, 2010.

353. Consequently, Hobet has accrued 1,266 days of violation of the performance standards incorporated in the regulations under SMCRA.

354. Because those performance standards are permit conditions, Hobet is also in violation of the terms and conditions of WVSCMRA Permit S500396.

355. Unless enjoined, Hobet will remain in ongoing and continuing violation of SMCRA.

356. On information and belief, Plaintiffs allege that Hobet is in continuing and/or intermittent violation of SMCRA as a result of its violations of the effluent limitations in WV/NPDES Permit Number WV1016776 because Hobet has taken no meaningful action to eradicate the underlying cause of the violations.

**TWENTY-SECOND CLAIM FOR RELIEF**

(Clean Water Act Violations of WV/NPDES Permit Number WV1020889)

357. Plaintiffs incorporate by reference all allegations contained in paragraphs 1 through 356 supra.

358. Hobet's wastewater discharges identified in the above paragraphs are discharges



from a point source or sources into navigable waters of the United States within the meaning of Section 301 of the Clean Water Act, which prohibits the discharge of any pollutant by any person, except in compliance with a permit. 33 U.S.C. § 1311.

359. The selenium limits in WV/NPDES Permit Number WV1020889 are “effluent standards or limitations” for purposes of section 505(a)(1) of the Clean Water Act because they are a condition of a permit issued under section 402 of the Act. 33 U.S.C. § 1365(f).

360. Each and every discharge in excess of the effluent limitations in WV/NPDES Permit Number WV1020889 is actionable under section 505(a)(1) of the Clean Water Act. 33 U.S.C. § 1365(a)(1).

361. A violation of an average monthly effluent limitation in a permit is considered to be a violation on each and every day of that month.

362. Hobet’s DMRs establish that Hobet has violated either the monthly average or daily maximum effluent limitation for selenium on in WV/NPDES Permit WV1020889 on 40 occasions since those limitations went into effect on April 5, 2010. Those 40 occasions, detailed in Appendix I, amount to 505 days of violation.

363. Unless enjoined, Hobet will remain in continuing violation of the Clean Water Act.

364. On information and belief, Plaintiffs allege that Hobet is in continuing and/or intermittent violation of the Clean Water Act as a result of its violations of the effluent limitations in WV/NPDES Permit Number WV1020889 because Hobet has taken no meaningful action to eradicate the underlying cause of the violations.

365. Pursuant to Section 309(d) of the CWA, 33 U.S.C. § 1319(d), Hobet is liable for civil penalties of up to \$37,500 per day of violation for its violations of the effluent limitations in WV/NPDES Permit Number WV1020889.

**TWENTY-THIRD CLAIM FOR RELIEF**

(SMCRA Violations Related to WV/NPDES Permit Number WV1020889)

366. Plaintiffs incorporate by reference all allegations contained in paragraphs 1 through 365 supra.

367. Section 520(a) of SMCRA, 30 U.S.C. § 1270(a), allows citizen suits in federal court against any “person who is alleged to be in violation of any rule, regulation, order or permit issued pursuant to this subchapter.”

368. As discussed above, federal and state regulations under SMCRA include performance standards that (1) prohibit surface mining operations that cause violations of effluent standards in Clean Water Act permits and (2) prohibit operations from causing material damage to the hydrologic balance outside of the permit area.

369. Under 38 C.S.R. § 2-3.33.c, all performance standards are incorporated as conditions in permits issued under the State Act.

370. WV/NPDES Permit Number WV1020889 regulates Hobet’s discharges from its Westridge No. 3 Surface Mine (WVSCMRA Permit No. S500203).

371. Plaintiffs allege that Hobet has violated the effluent limitations in WV/NPDES Permit WV1020889 on 40 occasions since April 5, 2010.

372. Consequently, Hobet has committed 505 days of violation of the performance standards incorporated in the regulations under SMCRA.

373. Because those performance standards are permit conditions, Hobet is also in violation of the terms and conditions of WVSCMRA Permit S500203.

374. Unless enjoined, Hobet will remain in ongoing and continuing violation of SMCRA.

375. On information and belief, Plaintiffs allege that Hobet is in continuing and/or intermittent violation of SMCRA as a result of its violations of the effluent limitations in WV/NPDES Permit Number WV1020889 because Hobet has taken no meaningful action to eradicate the underlying cause of the violations.

**TWENTY-FOURTH CLAIM FOR RELIEF**

(Clean Water Act Violations of WV/NPDES Permit Number WV1021028)

376. Plaintiffs incorporate by reference all allegations contained in paragraphs 1 through 375 supra.

377. Hobet's wastewater discharges identified in the above paragraphs are discharges from a point source or sources into navigable waters of the United States within the meaning of Section 301 of the Clean Water Act, which prohibits the discharge of any pollutant by any person, except in compliance with a permit. 33 U.S.C. § 1311.

378. The selenium limits in WV/NPDES Permit Number WV1021028 are "effluent standards or limitations" for purposes of section 505(a)(1) of the Clean Water Act because they are a condition of a permit issued under section 402 of the Act. 33 U.S.C. § 1365(f).

379. Each and every discharge in excess of the effluent limitations in WV/NPDES Permit Number WV1021028 is actionable under section 505(a)(1) of the Clean Water Act. 33 U.S.C. § 1365(a)(1).

380. A violation of an average monthly effluent limitation in a permit is considered to be a violation on each and every day of that month.

381. Hobet's DMRs establish that Hobet has violated either the monthly average or daily maximum effluent limitation for selenium on in WV/NPDES Permit WV1021028 on 22 occasions since those limitations went into effect on April 5, 2010. Those 22 occasions, detailed in Appendix J, amount to 284 days of violation.

382. Unless enjoined, Hobet will remain in continuing violation of the Clean Water Act.

383. On information and belief, Plaintiffs allege that Hobet is in continuing and/or intermittent violation of the Clean Water Act as a result of its violations of the effluent limitations in WV/NPDES Permit Number WV1021028 because Hobet has taken no meaningful action to eradicate the underlying cause of the violations.

384. Pursuant to Section 309(d) of the CWA, 33 U.S.C. § 1319(d), Hobet is liable for civil penalties of up to \$37,500 per day of violation for its violations of the effluent limitations in WV/NPDES Permit Number WV1021028.

**TWENTY-FIFTH CLAIM FOR RELIEF**

(SMCRA Violations Related to WV/NPDES Permit Number WV1021028)

385. Plaintiffs incorporate by reference all allegations contained in paragraphs 1 through 384 supra.

386. Section 520(a) of SMCRA, 30 U.S.C. § 1270(a), allows citizen suits in federal court against any "person who is alleged to be in violation of any rule, regulation, order or permit issued pursuant to this subchapter."

387. As discussed above, federal and state regulations under SMCRA include performance standards that (1) prohibit surface mining operations that cause violations of effluent standards in Clean Water Act permits and (2) prohibit operations from causing material damage to the hydrologic balance outside of the permit area.

388. Under 38 C.S.R. § 2-3.33.c, all performance standards are incorporated as conditions in permits issued under the State Act.

389. WV/NPDES Permit Number WV1021028 regulates Hobet's discharges from its Westridge No. 1 Mine (WVSCMRA Permit No. S500404).

390. Plaintiffs allege that Hobet has violated the effluent limitations in WV/NPDES Permit WV1021028 on 22 occasions since April 5, 2010.

391. Consequently, Hobet has committed 284 days of violation of the performance standards incorporated in the regulations under SMCRA.

392. Because those performance standards are permit conditions, Hobet is also in violation of the terms and conditions of WVSCMRA Permit S500404.

393. Unless enjoined, Hobet will remain in ongoing and continuing violation of SMCRA.

394. On information and belief, Plaintiffs allege that Hobet is in continuing and/or intermittent violation of SMCRA as a result of its violations of the effluent limitations in WV/NPDES Permit Number WV1021028 because Hobet has taken no meaningful action to eradicate the underlying cause of the violations.

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**RELIEF REQUESTED**

WHEREFORE, Plaintiffs respectfully request that this court enter an Order:

- (1). Declaring that Defendants have violated and are in continuing violation of the Clean Water Act and SMCRA;
- (2). Enjoining Defendants from operating their facilities in such a manner as will result in further violations of the effluent limitations in their WV/NPDES Permits;
- (3). Ordering Defendants to immediately comply with all effluent limitations, monitoring and reporting requirements, and other terms and conditions of their WV/NPDES Permits;
- (4). Ordering Apogee to immediately comply with all requirements of Compliance Order No. 493;
- (5). Ordering Catenary to immediately comply with all requirements of Order Nos. 198, 199, and 775 and Amended Order No. 1;
- (6). Ordering Defendants to immediately comply with the terms and conditions of their WVSCMRA Permits;
- (7). Ordering Defendants to pay appropriate civil penalties up to \$37,500 per day for each CWA violation;
- (8). Ordering Defendants to conduct monitoring and sampling to determine the environmental effects of their violations, to remedy and repair environmental contamination and/or degradation caused by their violations, and restore the environment to its prior uncontaminated condition;

(9). Awarding Plaintiffs' attorney and expert witness fees and all other reasonable expenses incurred in pursuit of this action; and

(10). Granting other such relief as the Court deems just and proper.

Respectfully submitted,

**/s/ DEREK O. TEANEY**

DEREK O. TEANEY (W.Va. Bar No.10223)

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**APPENDIX A SUMMARY OF VIOLATIONS OF THE EFFLUENT LIMITS IN  
WV/NPDES PERMIT WV0099520**

**OUTFALL 001**

DATE	TYPE	PARAMETER	UNITS	LIMIT	MEASURED VALUE	NO. OF VIOLATIONS
April 2010	Monthly Average	Selenium	µg/l	4.7	13.7	25
April 2010	Daily Maximum	Selenium	µg/l	8.2	13.5	1
April 2010	Daily Maximum	Selenium	µg/l	8.2	13.9	1
May 2010	Monthly Average	Selenium	µg/l	4.7	12.6	31
May 2010	Daily Maximum	Selenium	µg/l	8.2	12	1
May 2010	Daily Maximum	Selenium	µg/l	8.2	13.2	1
June 2010	Monthly Average	Selenium	µg/l	4.7	12.4	30
June 2010	Daily Maximum	Selenium	µg/l	8.2	11.7	1
June 2010	Daily Maximum	Selenium	µg/l	8.2	13.2	1
July 2010	Monthly Average	Selenium	µg/l	4.7	12.4	31
July 2010	Daily Maximum	Selenium	µg/l	8.2	11.7	1
July 2010	Daily Maximum	Selenium	µg/l	8.2	13.2	1
August 2010	Monthly Average	Selenium	µg/l	4.7	12.6	31
August 2010	Daily Maximum	Selenium	µg/l	8.2	11.5	1
August 2010	Daily Maximum	Selenium	µg/l	8.2	13.6	1
September 2010	Monthly Average	Selenium	µg/l	4.7	10.2	30
September 2010	Daily Maximum	Selenium	µg/l	8.2	9.89	1
September 2010	Daily Maximum	Selenium	µg/l	8.2	10.6	1
October 2010	Monthly Average	Selenium	µg/l	4.7	8.32	31
October 2010	Daily Maximum	Selenium	µg/l	8.2	8.58	1
November 2010	Monthly Average	Selenium	µg/l	4.7	7.93	30
December 2010	Monthly Average	Selenium	µg/l	4.7	11.9	31
December 2010	Daily Maximum	Selenium	µg/l	8.2	12.3	1
December 2010	Daily Maximum	Selenium	µg/l	8.2	11.4	1

**OUTFALL 011**

DATE	TYPE	PARAMETER	UNITS	LIMIT	MEASURED VALUE	
April 2010	Monthly Average	Selenium	µg/l	4.7	8.96	25
April 2010	Daily Maximum	Selenium	µg/l	8.2	9.99	1
May 2010	Monthly Average	Selenium	µg/l	4.7	6.35	31
June 2010	Monthly Average	Selenium	µg/l	4.7	5.49	30
June 2010	Daily Maximum	Selenium	µg/l	8.2	8.36	1

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**APPENDIX B SUMMARY OF VIOLATIONS OF THE EFFLUENT LIMITS IN  
WV/NPDES PERMIT WV0093751**

**OUTFALL 003**

DATE	TYPE	PARAMETER	UNITS	LIMIT	MEASURED VALUE	NO. OF VIOLATIONS
January 2010	Monthly Average	Selenium	µg/l	4.7	5.5	23
July 2010	Monthly Average	Selenium	µg/l	4.7	7	31
July 2010	Daily Maximum	Selenium	µg/l	8.2	9.2	1
August 2010	Monthly Average	Selenium	µg/l	4.7	7.4	31
August 2010	Daily Maximum	Selenium	µg/l	8.2	9.6	1
October 2010	Monthly Average	Selenium	µg/l	4.7	6.85	31
October 2010	Daily Maximum	Selenium	µg/l	8.2	9.1	1
November 2010	Monthly Average	Selenium	µg/l	4.7	6.55	30
December 2010	Monthly Average	Selenium	µg/l	4.7	4.75	31

**OUTFALL 005**

DATE	TYPE	PARAMETER	UNITS	LIMIT	MEASURED VALUE	
January 2010	Monthly Average	Selenium	µg/l	4.7	25.75	23
January 2010	Daily Maximum	Selenium	µg/l	8.2	19.7	1
January 2010	Daily Maximum	Selenium	µg/l	8.2	31.8	1
February 2010	Monthly Average	Selenium	µg/l	4.7	20.05	28
February 2010	Daily Maximum	Selenium	µg/l	8.2	17.2	1
February 2010	Daily Maximum	Selenium	µg/l	8.2	22.98	1
March 2010	Monthly Average	Selenium	µg/l	4.7	21.45	31
March 2010	Daily Maximum	Selenium	µg/l	8.2	16.3	1
March 2010	Daily Maximum	Selenium	µg/l	8.2	26.6	1
April 2010	Monthly Average	Selenium	µg/l	4.7	27.35	30
April 2010	Daily Maximum	Selenium	µg/l	8.2	26.2	1
April 2010	Daily Maximum	Selenium	µg/l	8.2	28.5	1
May 2010	Monthly Average	Selenium	µg/l	4.7	22.6	31
May 2010	Daily Maximum	Selenium	µg/l	8.2	21.2	1
May 2010	Daily Maximum	Selenium	µg/l	8.2	24	1
June 2010	Monthly Average	Selenium	µg/l	4.7	24.55	30
June 2010	Daily Maximum	Selenium	µg/l	8.2	21.7	1
June 2010	Daily Maximum	Selenium	µg/l	8.2	27.4	1
July 2010	Monthly Average	Selenium	µg/l	4.7	11.45	31
July 2010	Daily Maximum	Selenium	µg/l	8.2	22.3	1
August 2010	Monthly Average	Selenium	µg/l	4.7	26	31
August 2010	Daily Maximum	Selenium	µg/l	8.2	18.6	1
August 2010	Daily Maximum	Selenium	µg/l	8.2	33.4	1
September 2010	Monthly Average	Selenium	µg/l	4.7	17.75	30
September 2010	Daily Maximum	Selenium	µg/l	8.2	12.4	1
September 2010	Daily Maximum	Selenium	µg/l	8.2	23.1	1
October 2010	Monthly Average	Selenium	µg/l	4.7	16.95	31
October 2010	Daily Maximum	Selenium	µg/l	8.2	23.9	1
October 2010	Daily Maximum	Selenium	µg/l	8.2	10	1
November 2010	Monthly Average	Selenium	µg/l	4.7	20.15	30

November 2010	Daily Maximum	Selenium	µg/l	8.2	26.2	1
November 2010	Daily Maximum	Selenium	µg/l	8.2	14.1	1
December 2010	Monthly Average	Selenium	µg/l	4.7	18.3	31
December 2010	Daily Maximum	Selenium	µg/l	8.2	19.9	1
December 2010	Daily Maximum	Selenium	µg/l	8.2	16.7	1

## OUTFALL 026

DATE	TYPE	PARAMETER	UNITS	LIMIT	MEASURED VALUE	
January 2010	Monthly Average	Selenium	µg/l	4.7	10.75	23
January 2010	Daily Maximum	Selenium	µg/l	8.2	14.2	1
February 2010	Monthly Average	Selenium	µg/l	4.7	5.35	28
March 2010	Monthly Average	Selenium	µg/l	4.7	5.56	31
April 2010	Monthly Average	Selenium	µg/l	4.7	7.3	30
May 2010	Monthly Average	Selenium	µg/l	4.7	9.3	31
May 2010	Daily Maximum	Selenium	µg/l	8.2	8.4	1
May 2010	Daily Maximum	Selenium	µg/l	8.2	10.2	1
June 2010	Monthly Average	Selenium	µg/l	4.7	8.3	30
June 2010	Daily Maximum	Selenium	µg/l	8.2	8.4	1
July 2010	Monthly Average	Selenium	µg/l	4.7	9.3	31
July 2010	Daily Maximum	Selenium	µg/l	8.2	8.8	1
July 2010	Daily Maximum	Selenium	µg/l	8.2	9.8	1
August 2010	Monthly Average	Selenium	µg/l	4.7	10.9	31
August 2010	Daily Maximum	Selenium	µg/l	8.2	8.8	1
August 2010	Daily Maximum	Selenium	µg/l	8.2	13	1
September 2010	Monthly Average	Selenium	µg/l	4.7	6	30
September 2010	Daily Maximum	Selenium	µg/l	8.2	8.3	1
October 2010	Monthly Average	Selenium	µg/l	4.7	6.55	31
October 2010	Daily Maximum	Selenium	µg/l	8.2	10.8	1
November 2010	Monthly Average	Selenium	µg/l	4.7	12.45	30
November 2010	Daily Maximum	Selenium	µg/l	8.2	15	1
November 2010	Daily Maximum	Selenium	µg/l	8.2	9.9	1
December 2010	Monthly Average	Selenium	µg/l	4.7	11.1	31
December 2010	Daily Maximum	Selenium	µg/l	8.2	11.9	1
December 2010	Daily Maximum	Selenium	µg/l	8.2	10.3	1

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**APPENDIX C SUMMARY OF VIOLATIONS OF THE EFFLUENT LIMITS IN  
WV/NPDES PERMIT WV0096920**

**OUTFALL 001**

DATE	TYPE	PARAMETER	UNITS	LIMIT	MEASURED VALUE	NO. OF VIOLATIONS
January 2010	Monthly Average	Selenium	µg/l	4.7	10.4	9
January 2010	Daily Maximum	Selenium	µg/l	8.2	13.7	1
February 2010	Monthly Average	Selenium	µg/l	4.7	6.3	28
March 2010	Monthly Average	Selenium	µg/l	4.7	6.75	31
April 2010	Monthly Average	Selenium	µg/l	4.7	15.05	30
April 2010	Daily Maximum	Selenium	µg/l	8.2	14.6	1
April 2010	Daily Maximum	Selenium	µg/l	8.2	15.5	1
May 2010	Monthly Average	Selenium	µg/l	4.7	18.55	31
May 2010	Daily Maximum	Selenium	µg/l	8.2	17.7	1
May 2010	Daily Maximum	Selenium	µg/l	8.2	19.4	1
June 2010	Monthly Average	Selenium	µg/l	4.7	17.35	30
June 2010	Daily Maximum	Selenium	µg/l	8.2	16.2	1
June 2010	Daily Maximum	Selenium	µg/l	8.2	18.5	1
July 2010	Monthly Average	Selenium	µg/l	4.7	13.4	31
July 2010	Daily Maximum	Selenium	µg/l	8.2	12.6	1
July 2010	Daily Maximum	Selenium	µg/l	8.2	14.2	1
August 2010	Monthly Average	Selenium	µg/l	4.7	17.5	31
August 2010	Daily Maximum	Selenium	µg/l	8.2	14.1	1
August 2010	Daily Maximum	Selenium	µg/l	8.2	20.9	1
September 2010	Monthly Average	Selenium	µg/l	4.7	8.1	30
September 2010	Daily Maximum	Selenium	µg/l	8.2	9.4	1
October 2010	Monthly Average	Selenium	µg/l	4.7	15.15	31
October 2010	Daily Maximum	Selenium	µg/l	8.2	19	1
October 2010	Daily Maximum	Selenium	µg/l	8.2	11.3	1
November 2010	Monthly Average	Selenium	µg/l	4.7	22.15	30
November 2010	Daily Maximum	Selenium	µg/l	8.2	19.9	1
November 2010	Daily Maximum	Selenium	µg/l	8.2	24.4	1
December 2010	Monthly Average	Selenium	µg/l	4.7	19.35	31
December 2010	Daily Maximum	Selenium	µg/l	8.2	18.9	1
December 2010	Daily Maximum	Selenium	µg/l	8.2	19.8	1

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**APPENDIX D SUMMARY OF VIOLATIONS OF THE EFFLUENT LIMITS IN  
WV/NPDES PERMIT WV0096962**

**OUTFALL 001**

DATE	TYPE	PARAMETER	UNITS	LIMIT	MEASURED VALUE	DAYS OF VIOLATION
April 2010	Monthly Average	Selenium	µg/l	4.7	20.85	25
April 2010	Daily Maximum	Selenium	µg/l	8.2	21	1
April 2010	Daily Maximum	Selenium	µg/l	8.2	20.7	1
May 2010	Monthly Average	Selenium	µg/l	4.7	21.9	31
May 2010	Daily Maximum	Selenium	µg/l	8.2	22.8	1
May 2010	Daily Maximum	Selenium	µg/l	8.2	21	1
June 2010	Monthly Average	Selenium	µg/l	4.7	22.75	30
June 2010	Daily Maximum	Selenium	µg/l	8.2	23.6	1
June 2010	Daily Maximum	Selenium	µg/l	8.2	21.9	1
July 2010	Monthly Average	Selenium	µg/l	4.7	22.2	31
July 2010	Daily Maximum	Selenium	µg/l	8.2	22	1
July 2010	Daily Maximum	Selenium	µg/l	8.2	22.4	1
August 2010	Monthly Average	Selenium	µg/l	4.7	26	31
August 2010	Daily Maximum	Selenium	µg/l	8.2	19.4	1
August 2010	Daily Maximum	Selenium	µg/l	8.2	32.6	1
September 2010	Monthly Average	Selenium	µg/l	4.7	13.1	30
September 2010	Daily Maximum	Selenium	µg/l	8.2	9.8	1
September 2010	Daily Maximum	Selenium	µg/l	8.2	16.4	1
October 2010	Monthly Average	Selenium	µg/l	4.7	22.55	31
October 2010	Daily Maximum	Selenium	µg/l	8.2	28.4	1
October 2010	Daily Maximum	Selenium	µg/l	8.2	16.7	1
November 2010	Monthly Average	Selenium	µg/l	4.7	33.65	30
November 2010	Daily Maximum	Selenium	µg/l	8.2	36	1
November 2010	Daily Maximum	Selenium	µg/l	8.2	31.3	1
December 2010	Monthly Average	Selenium	µg/l	4.7	26.2	31
December 2010	Daily Maximum	Selenium	µg/l	8.2	26.6	1
December 2010	Daily Maximum	Selenium	µg/l	8.2	25.8	1

**OUTFALL 042**

DATE	TYPE	PARAMETER	UNITS	LIMIT	MEASURED VALUE	DAYS OF VIOLATION
April 2010	Monthly Average	Selenium	µg/l	4.7	22.1	25
April 2010	Daily Maximum	Selenium	µg/l	8.2	23.5	1
April 2010	Daily Maximum	Selenium	µg/l	8.2	20.7	1
May 2010	Monthly Average	Selenium	µg/l	4.7	28.75	31
May 2010	Daily Maximum	Selenium	µg/l	8.2	29.9	1
May 2010	Daily Maximum	Selenium	µg/l	8.2	27.6	1
June 2010	Monthly Average	Selenium	µg/l	4.7	24.8	30
June 2010	Daily Maximum	Selenium	µg/l	8.2	26.5	1
June 2010	Daily Maximum	Selenium	µg/l	8.2	23.1	1
July 2010	Monthly Average	Selenium	µg/l	4.7	10.3	31
July 2010	Daily Maximum	Selenium	µg/l	8.2	20.6	1
August 2010	Monthly Average	Selenium	µg/l	4.7	29.6	31
August 2010	Daily Maximum	Selenium	µg/l	8.2	36.8	1
August 2010	Daily Maximum	Selenium	µg/l	8.2	22.4	1

September 2010	Monthly Average	Selenium	µg/l	4.7	21.5	30
September 2010	Daily Maximum	Selenium	µg/l	8.2	27	1
September 2010	Daily Maximum	Selenium	µg/l	8.2	16	1
October 2010	Monthly Average	Selenium	µg/l	4.7	33.35	31
October 2010	Daily Maximum	Selenium	µg/l	8.2	33.4	1
October 2010	Daily Maximum	Selenium	µg/l	8.2	33.3	1
November 2010	Monthly Average	Selenium	µg/l	4.7	53.7	30
November 2010	Daily Maximum	Selenium	µg/l	8.2	61.1	1
November 2010	Daily Maximum	Selenium	µg/l	8.2	26.3	1
December 2010	Monthly Average	Selenium	µg/l	4.7	42.55	31
December 2010	Daily Maximum	Selenium	µg/l	8.2	43.1	1
December 2010	Daily Maximum	Selenium	µg/l	8.2	42	1

## OUTFALL 044

DATE	TYPE	PARAMETER	UNITS	LIMIT	MEASURED VALUE	DAYS OF VIOLATION
April 2010	Monthly Average	Selenium	µg/l	4.7	18.7	25
April 2010	Daily Maximum	Selenium	µg/l	8.2	19.2	1
April 2010	Daily Maximum	Selenium	µg/l	8.2	18.2	1
May 2010	Monthly Average	Selenium	µg/l	4.7	22.75	31
May 2010	Daily Maximum	Selenium	µg/l	8.2	24.5	1
May 2010	Daily Maximum	Selenium	µg/l	8.2	21	1
June 2010	Monthly Average	Selenium	µg/l	4.7	17.8	30
June 2010	Daily Maximum	Selenium	µg/l	8.2	18.6	1
June 2010	Daily Maximum	Selenium	µg/l	8.2	17	1
July 2010	Monthly Average	Selenium	µg/l	4.7	18.55	31
July 2010	Daily Maximum	Selenium	µg/l	8.2	18.2	1
July 2010	Daily Maximum	Selenium	µg/l	8.2	18.9	1
August 2010	Monthly Average	Selenium	µg/l	4.7	23.1	31
August 2010	Daily Maximum	Selenium	µg/l	8.2	29.3	1
August 2010	Daily Maximum	Selenium	µg/l	8.2	16.9	1
September 2010	Monthly Average	Selenium	µg/l	4.7	12.25	30
September 2010	Daily Maximum	Selenium	µg/l	8.2	16.1	1
September 2010	Daily Maximum	Selenium	µg/l	8.2	8.4	1
October 2010	Monthly Average	Selenium	µg/l	4.7	20.2	31
October 2010	Daily Maximum	Selenium	µg/l	8.2	24.4	1
October 2010	Daily Maximum	Selenium	µg/l	8.2	16	1
November 2010	Monthly Average	Selenium	µg/l	4.7	27.5	30
November 2010	Daily Maximum	Selenium	µg/l	8.2	29.4	1
November 2010	Daily Maximum	Selenium	µg/l	8.2	25.6	1
December 2010	Monthly Average	Selenium	µg/l	4.7	23.55	31
December 2010	Daily Maximum	Selenium	µg/l	8.2	23.7	1
December 2010	Daily Maximum	Selenium	µg/l	8.2	23.4	1

## OUTFALL 055

DATE	TYPE	PARAMETER	UNITS	LIMIT	MEASURED VALUE	DAYS OF VIOLATION
April 2010	Monthly Average	Selenium	µg/l	4.7	30.4	25
April 2010	Daily Maximum	Selenium	µg/l	8.2	31.2	1
April 2010	Daily Maximum	Selenium	µg/l	8.2	29.6	1

May 2010	Monthly Average	Selenium	µg/l	4.7	38.6	31
May 2010	Daily Maximum	Selenium	µg/l	8.2	43	1
May 2010	Daily Maximum	Selenium	µg/l	8.2	34.2	1
June 2010	Monthly Average	Selenium	µg/l	4.7	37.05	30
June 2010	Daily Maximum	Selenium	µg/l	8.2	41.4	1
June 2010	Daily Maximum	Selenium	µg/l	8.2	32.7	1
July 2010	Monthly Average	Selenium	µg/l	4.7	18.4	31
July 2010	Daily Maximum	Selenium	µg/l	8.2	27.6	1
July 2010	Daily Maximum	Selenium	µg/l	8.2	9.2	1
August 2010	Monthly Average	Selenium	µg/l	4.7	48.1	31
August 2010	Daily Maximum	Selenium	µg/l	8.2	26.4	1
August 2010	Daily Maximum	Selenium	µg/l	8.2	69.8	1
September 2010	Monthly Average	Selenium	µg/l	4.7	20.85	30
September 2010	Daily Maximum	Selenium	µg/l	8.2	16	1
September 2010	Daily Maximum	Selenium	µg/l	8.2	25.7	1
October 2010	Monthly Average	Selenium	µg/l	4.7	31.85	31
October 2010	Daily Maximum	Selenium	µg/l	8.2	42	1
October 2010	Daily Maximum	Selenium	µg/l	8.2	21.7	1
November 2010	Monthly Average	Selenium	µg/l	4.7	45.45	30
November 2010	Daily Maximum	Selenium	µg/l	8.2	50.2	1
November 2010	Daily Maximum	Selenium	µg/l	8.2	40.7	1
December 2010	Monthly Average	Selenium	µg/l	4.7	38.2	31
December 2010	Daily Maximum	Selenium	µg/l	8.2	38.2	1

## OUTFALL 056

DATE	TYPE	PARAMETER	UNITS	LIMIT	MEASURED VALUE	DAYS OF VIOLATION
April 2010	Monthly Average	Selenium	µg/l	4.7	17.05	25
April 2010	Daily Maximum	Selenium	µg/l	8.2	18	1
April 2010	Daily Maximum	Selenium	µg/l	8.2	16.1	1
May 2010	Monthly Average	Selenium	µg/l	4.7	26.05	31
May 2010	Daily Maximum	Selenium	µg/l	8.2	28.3	1
May 2010	Daily Maximum	Selenium	µg/l	8.2	23.8	1
June 2010	Monthly Average	Selenium	µg/l	4.7	34.25	30
June 2010	Daily Maximum	Selenium	µg/l	8.2	40.3	1
June 2010	Daily Maximum	Selenium	µg/l	8.2	28.2	1
July 2010	Monthly Average	Selenium	µg/l	4.7	8.9	31
July 2010	Daily Maximum	Selenium	µg/l	8.2	17.7	1
August 2010	Monthly Average	Selenium	µg/l	4.7	30.05	31
August 2010	Daily Maximum	Selenium	µg/l	8.2	23.7	1
August 2010	Daily Maximum	Selenium	µg/l	8.2	36.4	1
September 2010	Monthly Average	Selenium	µg/l	4.7	10.95	30
September 2010	Daily Maximum	Selenium	µg/l	8.2	11.4	1
September 2010	Daily Maximum	Selenium	µg/l	8.2	10.5	1
October 2010	Monthly Average	Selenium	µg/l	4.7	28.05	31
October 2010	Daily Maximum	Selenium	µg/l	8.2	26.8	1
October 2010	Daily Maximum	Selenium	µg/l	8.2	29.3	1
November 2010	Monthly Average	Selenium	µg/l	4.7	42.65	30
November 2010	Daily Maximum	Selenium	µg/l	8.2	49.7	1
November 2010	Daily Maximum	Selenium	µg/l	8.2	35.6	1
December 2010	Monthly Average	Selenium	µg/l	4.7	30.6	31

December 2010	Daily Maximum	Selenium	µg/l	8.2	30.9	1
December 2010	Daily Maximum	Selenium	µg/l	8.2	30.3	1
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**APPENDIX E SUMMARY OF VIOLATIONS OF THE EFFLUENT LIMITS IN  
WV/NPDES PERMIT WV1014684**

**OUTFALL 001**

DATE	TYPE	PARAMETER	UNITS	LIMIT	MEASURED VALUE	DAYS OF VIOLATION
April 2010	Monthly Average	Selenium	µg/l	4.7	24.1	25
April 2010	Daily Maximum	Selenium	µg/l	8.2	24.3	1
April 2010	Daily Maximum	Selenium	µg/l	8.2	23.9	1
May 2010	Monthly Average	Selenium	µg/l	4.7	26.55	31
May 2010	Daily Maximum	Selenium	µg/l	8.2	29.5	1
May 2010	Daily Maximum	Selenium	µg/l	8.2	23.6	1
June 2010	Monthly Average	Selenium	µg/l	4.7	13.1	30
June 2010	Daily Maximum	Selenium	µg/l	8.2	15.9	1
June 2010	Daily Maximum	Selenium	µg/l	8.2	10.3	1
July 2010	Monthly Average	Selenium	µg/l	4.7	22.95	31
July 2010	Daily Maximum	Selenium	µg/l	8.2	20.1	1
July 2010	Daily Maximum	Selenium	µg/l	8.2	25.8	1
August 2010	Monthly Average	Selenium	µg/l	4.7	28.7	31
August 2010	Daily Maximum	Selenium	µg/l	8.2	17.8	1
August 2010	Daily Maximum	Selenium	µg/l	8.2	39.6	1
September 2010	Monthly Average	Selenium	µg/l	4.7	39.9	30
September 2010	Daily Maximum	Selenium	µg/l	8.2	32.4	1
September 2010	Daily Maximum	Selenium	µg/l	8.2	47.4	1
October 2010	Monthly Average	Selenium	µg/l	4.7	34.8	31
October 2010	Daily Maximum	Selenium	µg/l	8.2	34.1	1
October 2010	Daily Maximum	Selenium	µg/l	8.2	35.5	1
November 2010	Monthly Average	Selenium	µg/l	4.7	54.6	30
November 2010	Daily Maximum	Selenium	µg/l	8.2	41	1
November 2010	Daily Maximum	Selenium	µg/l	8.2	68.2	1
December 2010	Monthly Average	Selenium	µg/l	4.7	27.7	31
December 2010	Daily Maximum	Selenium	µg/l	8.2	35.8	1
December 2010	Daily Maximum	Selenium	µg/l	8.2	19.6	1

**OUTFALL 002**

DATE	TYPE	PARAMETER	UNITS	LIMIT	MEASURED VALUE	DAYS OF VIOLATION
April 2010	Monthly Average	Selenium	µg/l	4.7	33.7	25
April 2010	Daily Maximum	Selenium	µg/l	8.2	35.9	1
April 2010	Daily Maximum	Selenium	µg/l	8.2	31.5	1
May 2010	Monthly Average	Selenium	µg/l	4.7	31.8	31
May 2010	Daily Maximum	Selenium	µg/l	8.2	31.8	1
June 2010	Monthly Average	Selenium	µg/l	4.7	21.55	30
June 2010	Daily Maximum	Selenium	µg/l	8.2	24.3	1
June 2010	Daily Maximum	Selenium	µg/l	8.2	18.8	1
July 2010	Monthly Average	Selenium	µg/l	4.7	29.65	31
July 2010	Daily Maximum	Selenium	µg/l	8.2	26.9	1
July 2010	Daily Maximum	Selenium	µg/l	8.2	32.4	1
August 2010	Monthly Average	Selenium	µg/l	4.7	45.5	31
August 2010	Daily Maximum	Selenium	µg/l	8.2	18.6	1



August 2010	Daily Maximum	Selenium	µg/l	8.2	72.4	1
September 2010	Monthly Average	Selenium	µg/l	4.7	43.7	30
September 2010	Daily Maximum	Selenium	µg/l	8.2	41.3	1
September 2010	Daily Maximum	Selenium	µg/l	8.2	46.1	1
October 2010	Monthly Average	Selenium	µg/l	4.7	39	31
October 2010	Daily Maximum	Selenium	µg/l	8.2	42.8	1
October 2010	Daily Maximum	Selenium	µg/l	8.2	35.2	1
November 2010	Monthly Average	Selenium	µg/l	4.7	53.5	30
November 2010	Daily Maximum	Selenium	µg/l	8.2	62.6	1
November 2010	Daily Maximum	Selenium	µg/l	8.2	44.4	1
December 2010	Monthly Average	Selenium	µg/l	4.7	28.65	31
December 2010	Daily Maximum	Selenium	µg/l	8.2	37.2	1
December 2010	Daily Maximum	Selenium	µg/l	8.2	10.1	1

## OUTFALL 003

DATE	TYPE	PARAMETER	UNITS	LIMIT	MEASURED VALUE	DAYS OF VIOLATION
April 2010	Monthly Average	Selenium	µg/l	4.7	19.6	25
April 2010	Daily Maximum	Selenium	µg/l	8.2	20	1
April 2010	Daily Maximum	Selenium	µg/l	8.2	19.2	1
May 2010	Monthly Average	Selenium	µg/l	4.7	20.1	31
May 2010	Daily Maximum	Selenium	µg/l	8.2	21.6	1
May 2010	Daily Maximum	Selenium	µg/l	8.2	18.6	1
June 2010	Monthly Average	Selenium	µg/l	4.7	27.05	30
June 2010	Daily Maximum	Selenium	µg/l	8.2	39.6	1
June 2010	Daily Maximum	Selenium	µg/l	8.2	14.5	1
July 2010	Monthly Average	Selenium	µg/l	4.7	17	31
July 2010	Daily Maximum	Selenium	µg/l	8.2	15.2	1
July 2010	Daily Maximum	Selenium	µg/l	8.2	18.8	1
August 2010	Monthly Average	Selenium	µg/l	4.7	20.3	31
August 2010	Daily Maximum	Selenium	µg/l	8.2	15.8	1
August 2010	Daily Maximum	Selenium	µg/l	8.2	24.8	1
September 2010	Monthly Average	Selenium	µg/l	4.7	10.7	30
September 2010	Daily Maximum	Selenium	µg/l	8.2	14.1	1
October 2010	Monthly Average	Selenium	µg/l	4.7	17.4	31
October 2010	Daily Maximum	Selenium	µg/l	8.2	21.6	1
October 2010	Daily Maximum	Selenium	µg/l	8.2	13.2	1
November 2010	Monthly Average	Selenium	µg/l	4.7	25.9	30
November 2010	Daily Maximum	Selenium	µg/l	8.2	27.2	1
November 2010	Daily Maximum	Selenium	µg/l	8.2	24.6	1
December 2010	Monthly Average	Selenium	µg/l	4.7	21.55	31
December 2010	Daily Maximum	Selenium	µg/l	8.2	21.7	1
December 2010	Daily Maximum	Selenium	µg/l	8.2	21.4	1

## OUTFALL 006

DATE	TYPE	PARAMETER	UNITS	LIMIT	MEASURED VALUE	DAYS OF VIOLATION
April 2010	Monthly Average	Selenium	µg/l	4.7	19.15	25
April 2010	Daily Maximum	Selenium	µg/l	8.2	19.8	1

April 2010	Daily Maximum	Selenium	µg/l	8.2	18.5	1
May 2010	Monthly Average	Selenium	µg/l	4.7	15.55	31
May 2010	Daily Maximum	Selenium	µg/l	8.2	16.3	1
May 2010	Daily Maximum	Selenium	µg/l	8.2	14.8	1
June 2010	Monthly Average	Selenium	µg/l	4.7	16.2	30
June 2010	Daily Maximum	Selenium	µg/l	8.2	17.1	1
June 2010	Daily Maximum	Selenium	µg/l	8.2	15.3	1
July 2010	Monthly Average	Selenium	µg/l	4.7	15.75	31
July 2010	Daily Maximum	Selenium	µg/l	8.2	15.7	1
July 2010	Daily Maximum	Selenium	µg/l	8.2	15.8	1
August 2010	Monthly Average	Selenium	µg/l	4.7	20.5	31
August 2010	Daily Maximum	Selenium	µg/l	8.2	15.4	1
August 2010	Daily Maximum	Selenium	µg/l	8.2	25.6	1
September 2010	Monthly Average	Selenium	µg/l	4.7	11.85	30
September 2010	Daily Maximum	Selenium	µg/l	8.2	15.9	1
October 2010	Monthly Average	Selenium	µg/l	4.7	17.55	31
October 2010	Daily Maximum	Selenium	µg/l	8.2	13.8	1
October 2010	Daily Maximum	Selenium	µg/l	8.2	21.3	1
November 2010	Monthly Average	Selenium	µg/l	4.7	22.85	30
November 2010	Daily Maximum	Selenium	µg/l	8.2	21	1
November 2010	Daily Maximum	Selenium	µg/l	8.2	24.7	1
December 2010	Monthly Average	Selenium	µg/l	4.7	22.1	31
December 2010	Daily Maximum	Selenium	µg/l	8.2	21.2	1
December 2010	Daily Maximum	Selenium	µg/l	8.2	23	1

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**APPENDIX F SUMMARY OF VIOLATIONS OF SELENIUM LIMITS  
WV/NPDES PERMIT WV1017152**

OUTFALL 004

DATE	TYPE	PARAMETER	UNITS	LIMIT	MEASURED VALUE	NO. OF VIOLATIONS
June 2010	Monthly Average	Selenium	µg/l	4.7	22.95	26
June 2010	Daily Maximum	Selenium	µg/l	8.2	36.40	1
June 2010	Daily Maximum	Selenium	µg/l	8.2	9.50	1
July 2010	Monthly Average	Selenium	µg/l	4.7	64.60	31
July 2010	Daily Maximum	Selenium	µg/l	8.2	27.20	1
July 2010	Daily Maximum	Selenium	µg/l	8.2	102.00	1
August 2010	Monthly Average	Selenium	µg/l	4.7	102.50	31
August 2010	Daily Maximum	Selenium	µg/l	8.2	71.00	1
August 2010	Daily Maximum	Selenium	µg/l	8.2	134.00	1
September 2010	Monthly Average	Selenium	µg/l	4.7	68.85	30
September 2010	Daily Maximum	Selenium	µg/l	8.2	50.00	1
September 2010	Daily Maximum	Selenium	µg/l	8.2	87.70	1
October 2010	Monthly Average	Selenium	µg/l	4.7	53.55	31
October 2010	Daily Maximum	Selenium	µg/l	8.2	66.80	1
October 2010	Daily Maximum	Selenium	µg/l	8.2	40.30	1
November 2010	Monthly Average	Selenium	µg/l	4.7	28.10	30
November 2010	Daily Maximum	Selenium	µg/l	8.2	28.50	1
November 2010	Daily Maximum	Selenium	µg/l	8.2	27.70	1
December 2010	Monthly Average	Selenium	µg/l	4.7	30.80	31
December 2010	Daily Maximum	Selenium	µg/l	8.2	32.60	1
December 2010	Daily Maximum	Selenium	µg/l	8.2	29.00	1

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**APPENDIX G SUMMARY OF VIOLATIONS OF THE EFFLUENT LIMITS IN WV/NPDES PERMIT WV0099392**

## OUTFALL 004

DATE	TYPE	PARAMETER	UNITS	LIMIT	MEASURED VALUE	DAYS OF VIOLATION
April 2010	Monthly Average	Selenium	µg/l	4.7	8.2	26
April 2010	Daily Maximum	Selenium	µg/l	8.2	8.9	1
May 2010	Monthly Average	Selenium	µg/l	4.7	7.9	31
July 2010	Monthly Average	Selenium	µg/l	4.7	6.75	31
July 2010	Daily Maximum	Selenium	µg/l	8.2	8	1
August 2010	Monthly Average	Selenium	µg/l	4.7	8.95	31
August 2010	Daily Maximum	Selenium	µg/l	8.2	11.8	1
September 2010	Monthly Average	Selenium	µg/l	4.7	6.2	30
October 2010	Monthly Average	Selenium	µg/l	4.7	7.65	31
November 2010	Monthly Average	Selenium	µg/l	4.7	5.15	30
December 2010	Monthly Average	Selenium	µg/l	4.7	6.15	31

## OUTFALL 014

DATE	TYPE	PARAMETER	UNITS	LIMIT	MEASURED VALUE	DAYS OF VIOLATION
April 2010	Monthly Average	Selenium	µg/l	4.7	6.15	26
May 2010	Monthly Average	Selenium	µg/l	4.7	8.05	31
May 2010	Daily Maximum	Selenium	µg/l	8.2	8.5	1
June 2010	Monthly Average	Selenium	µg/l	4.7	8.6	30
June 2010	Daily Maximum	Selenium	µg/l	8.2	9	1
July 2010	Monthly Average	Selenium	µg/l	4.7	9.2	31
July 2010	Daily Maximum	Selenium	µg/l	8.2	9	1
July 2010	Daily Maximum	Selenium	µg/l	8.2	9.4	1
August 2010	Monthly Average	Selenium	µg/l	4.7	8.5	31
August 2010	Daily Maximum	Selenium	µg/l	8.2	9	1
September 2010	Monthly Average	Selenium	µg/l	4.7	7.2	30

## OUTFALL 015

DATE	TYPE	PARAMETER	UNITS	LIMIT	MEASURED VALUE	DAYS OF VIOLATION
April 2010	Monthly Average	Selenium	µg/l	4.7	7.4	26
July 2010	Monthly Average	Selenium	µg/l	4.7	17	31
July 2010	Daily Maximum	Selenium	µg/l	8.2	15.2	1
July 2010	Daily Maximum	Selenium	µg/l	8.2	18.8	1
August 2010	Monthly Average	Selenium	µg/l	4.7	20.3	31
August 2010	Daily Maximum	Selenium	µg/l	8.2	15.8	1
August 2010	Daily Maximum	Selenium	µg/l	8.2	24.8	1
September 2010	Monthly Average	Selenium	µg/l	4.7	10.7	30
September 2010	Daily Maximum	Selenium	µg/l	8.2	14.1	1

## OUTFALL 027

DATE	TYPE	PARAMETER	UNITS	LIMIT	MEASURED VALUE	DAYS OF VIOLATION
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April 2010	Monthly Average	Selenium	µg/l	4.7	8.6	26
April 2010	Daily Maximum	Selenium	µg/l	8.2	9.2	1
May 2010	Monthly Average	Selenium	µg/l	4.7	8.15	31
May 2010	Daily Maximum	Selenium	µg/l	8.2	9.9	1
June 2010	Monthly Average	Selenium	µg/l	4.7	12.3	30
June 2010	Daily Maximum	Selenium	µg/l	8.2	10.4	1
June 2010	Daily Maximum	Selenium	µg/l	8.2	14.2	1
July 2010	Monthly Average	Selenium	µg/l	4.7	11.6	31
July 2010	Daily Maximum	Selenium	µg/l	8.2	11	1
July 2010	Daily Maximum	Selenium	µg/l	8.2	12.2	1
August 2010	Monthly Average	Selenium	µg/l	4.7	7.65	31
September 2010	Monthly Average	Selenium	µg/l	4.7	9.45	30
September 2010	Daily Maximum	Selenium	µg/l	8.2	9.1	1
September 2010	Daily Maximum	Selenium	µg/l	8.2	9.8	1
November 2010	Monthly Average	Selenium	µg/l	4.7	5.25	30
December 2010	Monthly Average	Selenium	µg/l	4.7	8.2	31
December 2010	Daily Maximum	Selenium	µg/l	8.2	11.6	1

## OUTFALL 028

DATE	TYPE	PARAMETER	UNITS	LIMIT	MEASURED VALUE	DAYS OF VIOLATION
April 2010	Monthly Average	Selenium	µg/l	4.7	11.85	26
April 2010	Daily Maximum	Selenium	µg/l	8.2	11.6	1
April 2010	Daily Maximum	Selenium	µg/l	8.2	12.1	1
May 2010	Monthly Average	Selenium	µg/l	4.7	12.85	31
May 2010	Daily Maximum	Selenium	µg/l	8.2	12.4	1
May 2010	Daily Maximum	Selenium	µg/l	8.2	13.3	1
June 2010	Monthly Average	Selenium	µg/l	4.7	16.8	30
June 2010	Daily Maximum	Selenium	µg/l	8.2	14.2	1
June 2010	Daily Maximum	Selenium	µg/l	8.2	19.4	1
July 2010	Monthly Average	Selenium	µg/l	4.7	15.3	31
July 2010	Daily Maximum	Selenium	µg/l	8.2	15	1
July 2010	Daily Maximum	Selenium	µg/l	8.2	15.6	1
August 2010	Monthly Average	Selenium	µg/l	4.7	10.8	31
August 2010	Daily Maximum	Selenium	µg/l	8.2	10.8	1
December 2010	Monthly Average	Selenium	µg/l	4.7	13.3	31
December 2010	Daily Maximum	Selenium	µg/l	8.2	8.9	1
December 2010	Daily Maximum	Selenium	µg/l	8.2	17.7	1

## OUTFALL 034

DATE	TYPE	PARAMETER	UNITS	LIMIT	MEASURED VALUE	DAYS OF VIOLATION
April 2010	Monthly Average	Selenium	µg/l	4.7	31.2	26
April 2010	Daily Maximum	Selenium	µg/l	8.2	30.7	1
April 2010	Daily Maximum	Selenium	µg/l	8.2	31.7	1
July 2010	Monthly Average	Selenium	µg/l	4.7	34.8	31
July 2010	Daily Maximum	Selenium	µg/l	8.2	34.8	1
August 2010	Monthly Average	Selenium	µg/l	4.7	26.9	31
August 2010	Daily Maximum	Selenium	µg/l	8.2	26.9	1

September 2010	Monthly Average	Selenium	µg/l	4.7	21.4	30
September 2010	Daily Maximum	Selenium	µg/l	8.2	21.4	1
October 2010	Monthly Average	Selenium	µg/l	4.7	23.4	31
October 2010	Daily Maximum	Selenium	µg/l	8.2	18.8	1
October 2010	Daily Maximum	Selenium	µg/l	8.2	28	1
November 2010	Monthly Average	Selenium	µg/l	4.7	16.15	30
November 2010	Daily Maximum	Selenium	µg/l	8.2	19.4	1
November 2010	Daily Maximum	Selenium	µg/l	8.2	32.9	1
December 2010	Monthly Average	Selenium	µg/l	4.7	26.8	31
December 2010	Daily Maximum	Selenium	µg/l	8.2	24.2	1
December 2010	Daily Maximum	Selenium	µg/l	8.2	29.4	1

## OUTFALL 035

DATE	TYPE	PARAMETER	UNITS	LIMIT	MEASURED VALUE	DAYS OF VIOLATION
May 2010	Monthly Average	Selenium	µg/l	4.7	5.35	31
May 2010	Daily Maximum	Selenium	µg/l	8.2	9.6	1
December 2010	Monthly Average	Selenium	µg/l	4.7	6.35	31
December 2010	Daily Maximum	Selenium	µg/l	8.2	8.4	1

## OUTFALL 037

DATE	TYPE	PARAMETER	UNITS	LIMIT	MEASURED VALUE	DAYS OF VIOLATION
April 2010	Monthly Average	Selenium	µg/l	4.7	11.5	26
April 2010	Daily Maximum	Selenium	µg/l	8.2	9.7	1
April 2010	Daily Maximum	Selenium	µg/l	8.2	13.3	1
May 2010	Monthly Average	Selenium	µg/l	4.7	14.85	31
May 2010	Daily Maximum	Selenium	µg/l	8.2	13.7	1
May 2010	Daily Maximum	Selenium	µg/l	8.2	16	1
June 2010	Monthly Average	Selenium	µg/l	4.7	16.8	30
June 2010	Daily Maximum	Selenium	µg/l	8.2	16.6	1
June 2010	Daily Maximum	Selenium	µg/l	8.2	17	1
July 2010	Monthly Average	Selenium	µg/l	4.7	15.9	31
July 2010	Daily Maximum	Selenium	µg/l	8.2	14.8	1
July 2010	Daily Maximum	Selenium	µg/l	8.2	17	1
August 2010	Monthly Average	Selenium	µg/l	4.7	14.9	31
August 2010	Daily Maximum	Selenium	µg/l	8.2	14.3	1
August 2010	Daily Maximum	Selenium	µg/l	8.2	15.5	1
September 2010	Monthly Average	Selenium	µg/l	4.7	11.75	30
September 2010	Daily Maximum	Selenium	µg/l	8.2	11.7	1
September 2010	Daily Maximum	Selenium	µg/l	8.2	11.8	1
October 2010	Monthly Average	Selenium	µg/l	4.7	9.55	31
October 2010	Daily Maximum	Selenium	µg/l	8.2	9.1	1
October 2010	Daily Maximum	Selenium	µg/l	8.2	10	1
November 2010	Monthly Average	Selenium	µg/l	4.7	5.9	30
December 2010	Monthly Average	Selenium	µg/l	4.7	6.65	31

## OUTFALL 038

DATE	TYPE	PARAMETER	UNITS	LIMIT	MEASURED VALUE	DAYS OF VIOLATION
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April 2010	Monthly Average	Selenium	µg/l	4.7	6.9	26
May 2010	Monthly Average	Selenium	µg/l	4.7	7.75	31
May 2010	Daily Maximum	Selenium	µg/l	8.2	9.5	1
July 2010	Monthly Average	Selenium	µg/l	4.7	4.75	31
July 2010	Daily Maximum	Selenium	µg/l	8.2	9.5	1
August 2010	Monthly Average	Selenium	µg/l	4.7	6.2	31
September 2010	Monthly Average	Selenium	µg/l	4.7	7.4	30
September 2010	Daily Maximum	Selenium	µg/l	8.2	9.7	1
November 2010	Monthly Average	Selenium	µg/l	4.7	5	30
December 2010	Monthly Average	Selenium	µg/l	4.7	6.05	31

## OUTFALL 040

DATE	TYPE	PARAMETER	UNITS	LIMIT	MEASURED VALUE	DAYS OF VIOLATION
April 2010	Monthly Average	Selenium	µg/l	4.7	12.9	26
April 2010	Daily Maximum	Selenium	µg/l	8.2	11.4	1
April 2010	Daily Maximum	Selenium	µg/l	8.2	14.4	1
May 2010	Monthly Average	Selenium	µg/l	4.7	8.8	31
May 2010	Daily Maximum	Selenium	µg/l	8.2	8.6	1
May 2010	Daily Maximum	Selenium	µg/l	8.2	9	1
June 2010	Monthly Average	Selenium	µg/l	4.7	10.95	30
June 2010	Daily Maximum	Selenium	µg/l	8.2	15.1	1
July 2010	Monthly Average	Selenium	µg/l	4.7	10.5	31
July 2010	Daily Maximum	Selenium	µg/l	8.2	9	1
July 2010	Daily Maximum	Selenium	µg/l	8.2	12	1
August 2010	Monthly Average	Selenium	µg/l	4.7	12.2	31
August 2010	Daily Maximum	Selenium	µg/l	8.2	16.2	1
September 2010	Monthly Average	Selenium	µg/l	4.7	8.3	30
September 2010	Daily Maximum	Selenium	µg/l	8.2	9.7	1
October 2010	Monthly Average	Selenium	µg/l	4.7	9.55	31
October 2010	Daily Maximum	Selenium	µg/l	8.2	9.2	1
October 2010	Daily Maximum	Selenium	µg/l	8.2	9.9	1
November 2010	Monthly Average	Selenium	µg/l	4.7	7.4	30
December 2010	Monthly Average	Selenium	µg/l	4.7	9	31
December 2010	Daily Maximum	Selenium	µg/l	8.2	11.5	1

## OUTFALL 045

DATE	TYPE	PARAMETER	UNITS	LIMIT	MEASURED VALUE	DAYS OF VIOLATION
April 2010	Monthly Average	Selenium	µg/l	4.7	13.4	26
April 2010	Daily Maximum	Selenium	µg/l	8.2	12	1
April 2010	Daily Maximum	Selenium	µg/l	8.2	14.8	1
May 2010	Monthly Average	Selenium	µg/l	4.7	18.25	31
May 2010	Daily Maximum	Selenium	µg/l	8.2	14	1
May 2010	Daily Maximum	Selenium	µg/l	8.2	22.5	1
June 2010	Monthly Average	Selenium	µg/l	4.7	17.75	30
June 2010	Daily Maximum	Selenium	µg/l	8.2	13.4	1
June 2010	Daily Maximum	Selenium	µg/l	8.2	22.1	1

July 2010	Monthly Average	Selenium	µg/l	4.7	16	31
July 2010	Daily Maximum	Selenium	µg/l	8.2	16	1

## OUTFALL 046

DATE	TYPE	PARAMETER	UNITS	LIMIT	MEASURED VALUE	DAYS OF VIOLATION
July 2010	Monthly Average	Selenium	µg/l	4.7	16.75	31
July 2010	Daily Maximum	Selenium	µg/l	8.2	11.2	1
July 2010	Daily Maximum	Selenium	µg/l	8.2	22.3	1
August 2010	Monthly Average	Selenium	µg/l	4.7	14.5	31
August 2010	Daily Maximum	Selenium	µg/l	8.2	13.2	1
August 2010	Daily Maximum	Selenium	µg/l	8.2	15.8	1
September 2010	Monthly Average	Selenium	µg/l	4.7	7.2	30
September 2010	Daily Maximum	Selenium	µg/l	8.2	7.2	1

## OUTFALL 077

DATE	TYPE	PARAMETER	UNITS	LIMIT	MEASURED VALUE	DAYS OF VIOLATION
April 2010	Monthly Average	Selenium	µg/l	4.7	6.8	26
May 2010	Monthly Average	Selenium	µg/l	4.7	7.15	31
May 2010	Daily Maximum	Selenium	µg/l	8.2	9.4	1
June 2010	Monthly Average	Selenium	µg/l	4.7	7.4	30
June 2010	Daily Maximum	Selenium	µg/l	8.2	11	1

## OUTFALL 079

DATE	TYPE	PARAMETER	UNITS	LIMIT	MEASURED VALUE	DAYS OF VIOLATION
April 2010	Monthly Average	Selenium	µg/l	4.7	5.8	26
May 2010	Monthly Average	Selenium	µg/l	4.7	6	31
June 2010	Monthly Average	Selenium	µg/l	4.7	9.8	30
June 2010	Daily Maximum	Selenium	µg/l	8.2	16.6	1
July 2010	Monthly Average	Selenium	µg/l	4.7	11.55	31
July 2010	Daily Maximum	Selenium	µg/l	8.2	16	1
August 2010	Monthly Average	Selenium	µg/l	4.7	19.8	31
August 2010	Daily Maximum	Selenium	µg/l	8.2	16.4	1
August 2010	Daily Maximum	Selenium	µg/l	8.2	23.2	1
September 2010	Monthly Average	Selenium	µg/l	4.7	10	30
September 2010	Daily Maximum	Selenium	µg/l	8.2	13.3	1

## OUTFALL 084

DATE	TYPE	PARAMETER	UNITS	LIMIT	MEASURED VALUE	DAYS OF VIOLATION
April 2010	Monthly Average	Selenium	µg/l	4.7	8.5	26
April 2010	Daily Maximum	Selenium	µg/l	8.2	9.8	1
May 2010	Monthly Average	Selenium	µg/l	4.7	9.4	31
May 2010	Daily Maximum	Selenium	µg/l	8.2	18.8	1
June 2010	Monthly Average	Selenium	µg/l	4.7	15.3	30
June 2010	Daily Maximum	Selenium	µg/l	8.2	13.5	1
June 2010	Daily Maximum	Selenium	µg/l	8.2	17.1	1



July 2010	Monthly Average	Selenium	µg/l	4.7	19..1	31
July 2010	Daily Maximum	Selenium	µg/l	8.2	11.2	1
July 2010	Daily Maximum	Selenium	µg/l	8.2	27	1
August 2010	Monthly Average	Selenium	µg/l	4.7	19.75	31
August 2010	Daily Maximum	Selenium	µg/l	8.2	11.7	1
August 2010	Daily Maximum	Selenium	µg/l	8.2	27.8	1
October 2010	Monthly Average	Selenium	µg/l	4.7	7.8	31
October 2010	Daily Maximum	Selenium	µg/l	8.2	12.6	1
November 2010	Monthly Average	Selenium	µg/l	4.7	9.5	30
November 2010	Daily Maximum	Selenium	µg/l	8.2	12	1
December 2010	Monthly Average	Selenium	µg/l	4.7	10.35	31
December 2010	Daily Maximum	Selenium	µg/l	8.2	12.1	1
December 2010	Daily Maximum	Selenium	µg/l	8.2	8.6	1

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**APPENDIX H SUMMARY OF VIOLATIONS OF THE EFFLUENT LIMITS IN  
WV/NPDES PERMIT WV1016776**

**OUTFALL 001**

DATE	TYPE	PARAMETER	UNITS	LIMIT	MEASURED VALUE	DAYS OF VIOLATION
April 2010	Monthly Average	Selenium	µg/l	4.7	11.7	26
April 2010	Daily Maximum	Selenium	µg/l	8.2	12.6	1
April 2010	Daily Maximum	Selenium	µg/l	8.2	10.8	1
May 2010	Monthly Average	Selenium	µg/l	4.7	15.7	31
May 2010	Daily Maximum	Selenium	µg/l	8.2	17.4	1
May 2010	Daily Maximum	Selenium	µg/l	8.2	14	1
June 2010	Monthly Average	Selenium	µg/l	4.7	20.8	30
June 2010	Daily Maximum	Selenium	µg/l	8.2	21.8	1
June 2010	Daily Maximum	Selenium	µg/l	8.2	19.8	1
July 2010	Monthly Average	Selenium	µg/l	4.7	18.6	31
July 2010	Daily Maximum	Selenium	µg/l	8.2	16.6	1
July 2010	Daily Maximum	Selenium	µg/l	8.2	20.6	1
September 2010	Monthly Average	Selenium	µg/l	4.7	15.8	30
September 2010	Daily Maximum	Selenium	µg/l	8.2	14.2	1
September 2010	Daily Maximum	Selenium	µg/l	8.2	17.4	1
October 2010	Monthly Average	Selenium	µg/l	4.7	8.1	31
October 2010	Daily Maximum	Selenium	µg/l	8.2	10.6	1
November 2010	Monthly Average	Selenium	µg/l	4.7	5.9	30
December 2010	Monthly Average	Selenium	µg/l	4.7	6.1	31

**OUTFALL 002**

DATE	TYPE	PARAMETER	UNITS	LIMIT	MEASURED VALUE	DAYS OF VIOLATION
April 2010	Monthly Average	Selenium	µg/l	4.7	32	26
April 2010	Daily Maximum	Selenium	µg/l	8.2	39.5	1
April 2010	Daily Maximum	Selenium	µg/l	8.2	24.5	1
May 2010	Monthly Average	Selenium	µg/l	4.7	33.25	31
May 2010	Daily Maximum	Selenium	µg/l	8.2	38.5	1
May 2010	Daily Maximum	Selenium	µg/l	8.2	28	1
June 2010	Monthly Average	Selenium	µg/l	4.7	37.3	30
June 2010	Daily Maximum	Selenium	µg/l	8.2	41.3	1
June 2010	Daily Maximum	Selenium	µg/l	8.2	33.3	1
July 2010	Monthly Average	Selenium	µg/l	4.7	41.85	31
July 2010	Daily Maximum	Selenium	µg/l	8.2	40.9	1
July 2010	Daily Maximum	Selenium	µg/l	8.2	42.8	1

**OUTFALL 003**

DATE	TYPE	PARAMETER	UNITS	LIMIT	MEASURED VALUE	DAYS OF VIOLATION
April 2010	Monthly Average	Selenium	µg/l	4.7	11.9	26
April 2010	Daily Maximum	Selenium	µg/l	8.2	13.8	1
April 2010	Daily Maximum	Selenium	µg/l	8.2	10	1
May 2010	Monthly Average	Selenium	µg/l	4.7	12.25	31
May 2010	Daily Maximum	Selenium	µg/l	8.2	13.3	1

May 2010	Daily Maximum	Selenium	µg/l	8.2	11.2	1
June 2010	Monthly Average	Selenium	µg/l	4.7	14.35	30
June 2010	Daily Maximum	Selenium	µg/l	8.2	14.5	1
June 2010	Daily Maximum	Selenium	µg/l	8.2	14.2	1
November 2010	Monthly Average	Selenium	µg/l	4.7	37.6	30
November 2010	Daily Maximum	Selenium	µg/l	8.2	37.6	1
December 2010	Monthly Average	Selenium	µg/l	4.7	5	31

## OUTFALL 004

DATE	TYPE	PARAMETER	UNITS	LIMIT	MEASURED VALUE	DAYS OF VIOLATION
April 2010	Monthly Average	Selenium	µg/l	4.7	11.45	26
April 2010	Daily Maximum	Selenium	µg/l	8.2	11.5	1
April 2010	Daily Maximum	Selenium	µg/l	8.2	11.4	1
May 2010	Monthly Average	Selenium	µg/l	4.7	15.9	31
May 2010	Daily Maximum	Selenium	µg/l	8.2	19.2	1
May 2010	Daily Maximum	Selenium	µg/l	8.2	12.6	1
June 2010	Monthly Average	Selenium	µg/l	4.7	17.7	30
June 2010	Daily Maximum	Selenium	µg/l	8.2	17.7	1

## OUTFALL 006

DATE	TYPE	PARAMETER	UNITS	LIMIT	MEASURED VALUE	DAYS OF VIOLATION
April 2010	Monthly Average	Selenium	µg/l	4.7	16.5	26
April 2010	Daily Maximum	Selenium	µg/l	8.2	16.8	1
April 2010	Daily Maximum	Selenium	µg/l	8.2	16.2	1
May 2010	Monthly Average	Selenium	µg/l	4.7	20.35	31
May 2010	Daily Maximum	Selenium	µg/l	8.2	25.3	1
May 2010	Daily Maximum	Selenium	µg/l	8.2	15.4	1

## OUTFALL 007

DATE	TYPE	PARAMETER	UNITS	LIMIT	MEASURED VALUE	DAYS OF VIOLATION
April 2010	Monthly Average	Selenium	µg/l	4.7	24.15	26
April 2010	Daily Maximum	Selenium	µg/l	8.2	25.1	1
April 2010	Daily Maximum	Selenium	µg/l	8.2	23.2	1
May 2010	Monthly Average	Selenium	µg/l	4.7	26.65	31
May 2010	Daily Maximum	Selenium	µg/l	8.2	31.6	1
May 2010	Daily Maximum	Selenium	µg/l	8.2	21.7	1
June 2010	Monthly Average	Selenium	µg/l	4.7	17.9	30
June 2010	Daily Maximum	Selenium	µg/l	8.2	35.8	1
July 2010	Monthly Average	Selenium	µg/l	4.7	28.7	31
July 2010	Daily Maximum	Selenium	µg/l	8.2	28.3	1
July 2010	Daily Maximum	Selenium	µg/l	8.2	29.1	1
September 2010	Monthly Average	Selenium	µg/l	4.7	15.9	30
September 2010	Daily Maximum	Selenium	µg/l	8.2	15.9	1

## OUTFALL 041

DATE	TYPE	PARAMETER	UNITS	LIMIT	MEASURED VALUE	DAYS OF VIOLATION
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April 2010	Monthly Average	Selenium	µg/l	4.7	12.85	26
April 2010	Daily Maximum	Selenium	µg/l	8.2	13.1	1
April 2010	Daily Maximum	Selenium	µg/l	8.2	12.6	1
May 2010	Monthly Average	Selenium	µg/l	4.7	10.05	31
May 2010	Daily Maximum	Selenium	µg/l	8.2	10.3	1
May 2010	Daily Maximum	Selenium	µg/l	8.2	9.8	1
June 2010	Monthly Average	Selenium	µg/l	4.7	24.3	30
June 2010	Daily Maximum	Selenium	µg/l	8.2	30	1
June 2010	Daily Maximum	Selenium	µg/l	8.2	18.6	1
July 2010	Monthly Average	Selenium	µg/l	4.7	16.6	31
July 2010	Daily Maximum	Selenium	µg/l	8.2	14	1
July 2010	Daily Maximum	Selenium	µg/l	8.2	19.2	1
December 2010	Monthly Average	Selenium	µg/l	4.7	10.9	31
December 2010	Daily Maximum	Selenium	µg/l	8.2	15	13

## OUTFALL 050

DATE	TYPE	PARAMETER	UNITS	LIMIT	MEASURED VALUE	DAYS OF VIOLATION
April 2010	Monthly Average	Selenium	µg/l	4.7	14.25	26
April 2010	Daily Maximum	Selenium	µg/l	8.2	14.9	1
April 2010	Daily Maximum	Selenium	µg/l	8.2	13.6	1
May 2010	Monthly Average	Selenium	µg/l	4.7	16.95	31
May 2010	Daily Maximum	Selenium	µg/l	8.2	18.4	1
May 2010	Daily Maximum	Selenium	µg/l	8.2	15.5	1
June 2010	Monthly Average	Selenium	µg/l	4.7	27.35	30
June 2010	Daily Maximum	Selenium	µg/l	8.2	35.3	1
June 2010	Daily Maximum	Selenium	µg/l	8.2	19.4	1
July 2010	Monthly Average	Selenium	µg/l	4.7	28.25	31
July 2010	Daily Maximum	Selenium	µg/l	8.2	27.9	1
July 2010	Daily Maximum	Selenium	µg/l	8.2	28.6	1
September 2010	Monthly Average	Selenium	µg/l	4.7	24.3	30
September 2010	Daily Maximum	Selenium	µg/l	8.2	22.6	1
September 2010	Daily Maximum	Selenium	µg/l	8.2	26	1
October 2010	Monthly Average	Selenium	µg/l	4.7	17.05	31
October 2010	Daily Maximum	Selenium	µg/l	8.2	13.2	1
October 2010	Daily Maximum	Selenium	µg/l	8.2	20.9	1
November 2010	Monthly Average	Selenium	µg/l	4.7	11.35	30
November 2010	Daily Maximum	Selenium	µg/l	8.2	9.8	1
November 2010	Daily Maximum	Selenium	µg/l	8.2	12.9	1
December 2010	Monthly Average	Selenium	µg/l	4.7	9.05	31
December 2010	Daily Maximum	Selenium	µg/l	8.2	10	1

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**APPENDIX I SUMMARY OF VIOLATIONS OF THE EFFLUENT LIMITS IN  
WV/NPDES PERMIT WV1020889**

**OUTFALL 001**

DATE	TYPE	PARAMETER	UNITS	LIMIT	MEASURED VALUE	DAYS OF VIOLATION
April 2010	Monthly Average	Selenium	µg/l	4.7	17.8	26
April 2010	Daily Maximum	Selenium	µg/l	8.2	17.8	1
May 2010	Monthly Average	Selenium	µg/l	4.7	26.15	31
May 2010	Daily Maximum	Selenium	µg/l	8.2	33.2	1
May 2010	Daily Maximum	Selenium	µg/l	8.2	19.1	1
June 2010	Monthly Average	Selenium	µg/l	4.7	48.2	30
June 2010	Daily Maximum	Selenium	µg/l	8.2	59.2	1
June 2010	Daily Maximum	Selenium	µg/l	8.2	37.2	1
July 2010	Monthly Average	Selenium	µg/l	4.7	49.5	31
July 2010	Daily Maximum	Selenium	µg/l	8.2	40	1
July 2010	Daily Maximum	Selenium	µg/l	8.2	59	1
August 2010	Monthly Average	Selenium	µg/l	4.7	70.35	31
August 2010	Daily Maximum	Selenium	µg/l	8.2	55.3	1
August 2010	Daily Maximum	Selenium	µg/l	8.2	85.4	1
September 2010	Monthly Average	Selenium	µg/l	4.7	36.1	30
September 2010	Daily Maximum	Selenium	µg/l	8.2	36.1	1
December 2010	Monthly Average	Selenium	µg/l	4.7	21.2	31
December 2010	Daily Maximum	Selenium	µg/l	8.2	31.4	1
December 2010	Daily Maximum	Selenium	µg/l	8.2	11	1

**OUTFALL 003**

DATE	TYPE	PARAMETER	UNITS	LIMIT	MEASURED VALUE	DAYS OF VIOLATION
April 2010	Monthly Average	Selenium	µg/l	4.7	18.55	26
April 2010	Daily Maximum	Selenium	µg/l	8.2	18.8	1
April 2010	Daily Maximum	Selenium	µg/l	8.2	18.3	1
May 2010	Monthly Average	Selenium	µg/l	4.7	18.55	31
May 2010	Daily Maximum	Selenium	µg/l	8.2	21.5	1
May 2010	Daily Maximum	Selenium	µg/l	8.2	15.6	1
June 2010	Monthly Average	Selenium	µg/l	4.7	29.25	30
June 2010	Daily Maximum	Selenium	µg/l	8.2	37.1	1
June 2010	Daily Maximum	Selenium	µg/l	8.2	21.4	1
July 2010	Monthly Average	Selenium	µg/l	4.7	5.4	31
July 2010	Daily Maximum	Selenium	µg/l	8.2	10.8	1
August 2010	Monthly Average	Selenium	µg/l	4.7	30.5	31
August 2010	Daily Maximum	Selenium	µg/l	8.2	22	1
August 2010	Daily Maximum	Selenium	µg/l	8.2	29	1
September 2010	Monthly Average	Selenium	µg/l	4.7	15.8	30
September 2010	Daily Maximum	Selenium	µg/l	8.2	12.4	1
September 2010	Daily Maximum	Selenium	µg/l	8.2	19.2	1
October 2010	Monthly Average	Selenium	µg/l	4.7	5.3	31
November 2010	Monthly Average	Selenium	µg/l	4.7	8.1	30
November 2010	Daily Maximum	Selenium	µg/l	8.2	10	1
December 2010	Monthly Average	Selenium	µg/l	4.7	4.75	31

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**APPENDIX J SUMMARY OF VIOLATIONS OF THE EFFLUENT LIMITS IN  
WV/NPDES PERMIT WV1021028**

OUTFALL 006

DATE	TYPE	PARAMETER	UNITS	LIMIT	MEASURED VALUE	DAYS OF VIOLATION
April 2010	Monthly Average	Selenium	µg/l	4.7	11.85	26
April 2010	Daily Maximum	Selenium	µg/l	8.2	15	1
April 2010	Daily Maximum	Selenium	µg/l	8.2	8.7	1
May 2010	Monthly Average	Selenium	µg/l	4.7	19.9	31
May 2010	Daily Maximum	Selenium	µg/l	8.2	21.2	1
May 2010	Daily Maximum	Selenium	µg/l	8.2	18.6	1
June 2010	Monthly Average	Selenium	µg/l	4.7	25.1	30
June 2010	Daily Maximum	Selenium	µg/l	8.2	30.8	1
June 2010	Daily Maximum	Selenium	µg/l	8.2	19.4	1
July 2010	Monthly Average	Selenium	µg/l	4.7	21.2	31
July 2010	Daily Maximum	Selenium	µg/l	8.2	17.2	1
July 2010	Daily Maximum	Selenium	µg/l	8.2	25.2	1
August 2010	Monthly Average	Selenium	µg/l	4.7	16.6	31
August 2010	Daily Maximum	Selenium	µg/l	8.2	16.1	1
August 2010	Daily Maximum	Selenium	µg/l	8.2	17.1	1
September 2010	Monthly Average	Selenium	µg/l	4.7	13.9	30
September 2010	Daily Maximum	Selenium	µg/l	8.2	12.7	1
September 2010	Daily Maximum	Selenium	µg/l	8.2	15.1	1
October 2010	Monthly Average	Selenium	µg/l	4.7	6.4	31
November 2010	Monthly Average	Selenium	µg/l	4.7	6.85	30
December 2010	Monthly Average	Selenium	µg/l	4.7	9.05	31
December 2010	Daily Maximum	Selenium	µg/l	8.2	10.8	1

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## MEMORANDUM OF AGREEMENT

This Memorandum of Agreement (hereinafter the "Agreement"), entered between the Ohio Valley Environmental Coalition, Inc., the West Virginia Highlands Conservancy, Inc., and the Sierra Club (hereinafter collectively the "OVEC Entities") and Patriot Coal Corporation, Apogee Company, LLC ("Apogee"), Hobet Mining, LLC ("Hobet"), and Patriot Coal Corporation's other operating subsidiaries, (collectively hereinafter "Patriot") this 2nd day of October, 2010 is executed for the purposes hereinafter stated. It is intended to govern the actions of OVEC Entities and Patriot with respect to one another as to each existing legal action previously filed by the OVEC Entities and pending against Patriot, and for all other legal actions to enforce selenium permit limits placed in CWA permits issued to Patriot that could be brought in the state or federal courts regardless of venue for the duration of this Agreement.

The parties to this Agreement agree to be bound as follows.

### ***OVEC, et al v. Apogee Coal Company, LLC, 3:07-cv-0413***

1. An order in this matter was entered on September 1, 2010 following the completion of a four day trial and closing arguments. Apogee has been ordered to install a method of treatment identified as a Fluidized Bed Reactor (FBR) and comply with the effluent limits for selenium by March 1, 2013.
2. Patriot agrees that it will not appeal to the United States Court of Appeals for the Fourth Circuit any order previously entered by the District Court in the case (Civ. No. 3:07-cv-0413) prior to the date of this agreement and that it will withdraw or dismiss the Notice of Appeal filed on September 30, 2010.
3. Patriot agrees that it will withdraw the motion to join OVEC Entities pending before the Circuit Court of Logan County at Civil Action No. 10-C-144 concerning NPDES



permit WV0099520 on or before October 20, 2010 without prejudice to Patriot's right to re-file on or after December 14, 2011.

4. Patriot agrees that it will pay attorneys' and expert witness fees in the amount of \$524,991 in full consideration and settlement of any claim of the OVEC Entities for attorneys and expert witness fees, costs and expenses incurred up to the date of this Agreement. The fees and expenses will be apportioned as follows: \$108,591 for expenses; Derek Teaney (Appalachian Center) 701 hours at \$205/hour; Joe Lovett (Appalachian Center) 578 hours at \$320/hour; Jim Hecker (Public Justice) 214 hours at \$350/hour; Ben Luckett (Appalachian Center) 51 hours at \$145/hour; paralegal 64 hours at \$85/hour. This Agreement will not affect the OVEC entities' ability to seek fees for work overseeing or enforcing Court Orders in the Apogee and Hobet 22 cases subsequent to the date of this Agreement. Not later than seven days from the signing of this agreement, Defendant shall deliver to Plaintiffs' counsel a check for the full amount made payable to the Appalachian Center for the Economy and the Environment, Inc. The Appalachian Center for the Economy and the Environment, Inc., shall be wholly responsible for the proper distribution of any portions of the delivered sum to any and all other attorneys, experts or other entities who may be entitled thereto.
5. Provided that Patriot constructs the FBR system as required by the September 1, 2010 and October 8, 2010 orders, the OVEC Entities agree that they will seek no civil penalties or sanctions for, nor institute any new action against Patriot with respect to, discharges of selenium from NPDES permit WV1013599 prior to March 1, 2013,

regardless of the performance of the FBR system. This provision shall survive expiration of this Agreement.

***OVEC, et al v. Hobet Mining, LLC, 3:09-cv-1167***

6. An order in this matter was entered on September 1, 2010 following the completion of a four day trial and closing arguments. Hobet has been ordered to comply with the effluent limits for selenium for NPDES permit WV1022911 by May 1, 2013, but otherwise has not been ordered to install any specific method of treatment to comply with the court's order. Patriot has contracted with CH2M Hill to evaluate methods of treatment appropriate to the permit, either individually or in conjunction with other permits.
7. Patriot agrees that it will not appeal to the United States Court of Appeals for the Fourth Circuit any order previously entered by the District Court in the case (Civ. No. 3:09-cv-1167) prior to the date of this agreement and that it will withdraw or dismiss the Notice of Appeal filed on September 30, 2010.
8. The Parties agree that the payment of attorneys' and expert witness fees required by Paragraph 4 constitutes full consideration and settlement of any claim of the OVEC Entities for attorneys fees and expert witness fees, costs, and expenses incurred up to the date of this Agreement. This Agreement will not affect the OVEC entities' ability to seek fees for work overseeing or enforcing Court Orders in the Apogee and Hobet 22 cases.
9. In the event that Patriot constructs an FBR treatment system, the OVEC Entities agree that they will seek no civil penalties or sanctions for, nor institute any new action against Patriot with respect to, discharges of selenium from NPDES permit

WV1022911 prior to May 1, 2013, regardless of the performance of the system. This provision shall survive expiration of this Agreement.

***OVEC, et al v. Catenary Coal Company, LLC and Hobet Mining, LLC, 3:10-cv-00847***

10. This action was filed by the OVEC Entities on June 18, 2010 and is the subject of a motion to dismiss filed by Patriot. The complaint against Hobet comprises the same four NPDES permits that are the subject of civil action number 3:08-cv-0088. The OVEC Entities and Patriot agree to file a joint motion under FRCP 42 to voluntarily dismiss Civil Action No. 3:10-cv-00847 without prejudice.
11. The OVEC Entities will refrain from re-filing the case against Catenary and Hobet until dates specified in the attached schedule. The OVEC Entities will not seek any trial for adjudication of any issues earlier than April 3, 2012.
12. Patriot agrees that it will withdraw the motion to join the OVEC Entities pending before the Circuit Court of Boone County at Civil Action No. 10-C- 96 concerning NPDES permits WV0096920, WV0093751, WV0096962 and WV1014684 before October 20, 2010, without prejudice to Patriot's right to re-file on or after December 14, 2011.
13. Patriot agrees that it will not appeal to the United States Court of Appeals for the Fourth Circuit any order previously entered by the District Court in Civil Action No. 3:08-cv-0088 and that it will withdraw or dismiss the Notice of Appeal filed on September 30, 2010.

**Limitation on all other Actions**

14. The OVEC Entities agree that they will refrain from seeking to schedule a trial on any legal action pertaining to enforcement of any selenium permit limits issued by state



or federal agencies to Patriot, whether now in existence or hereafter acquired, any earlier than April 3, 2012. This limitation on actions does not prohibit the OVEC Entities from issuing a notice of intent to sue if required as a jurisdictional element of any action that the OVEC Entities may wish to pursue, filing a complaint and dispositive motions, or engaging in discovery so long as the filing of such pleadings does not result in trial any earlier than April 3, 2012. The permissible schedule for future actions shall be governed by the schedule in Appendix A to this Agreement.

15. The standstill requirement set forth in Paragraph 14 will apply to all representatives of the OVEC Entities. The provisions of this paragraph shall not prohibit members of the OVEC entities from prosecuting claims against Patriot Coal for property damage or personal injury resulting from Patriot's selenium discharges from its coal mining operations.

16. The standstill requirement set forth in Paragraph 14 will apply to actions having as their principal claim the violation of selenium permit limits. In the event that a civil action is brought against any other person under any theory or claim, and the OVEC Entities would have the right to join Patriot or its subsidiaries, it will forego any right to do so or delay the scheduling of any trial in accordance with the provisions of Appendix A.

17. Patriot Coal agrees that it will not file a motion to join the OVEC entities to any enforcement action commenced against Patriot Coal by WVDEP or US EPA until December 14, 2011.

#### **No Prohibition on other Actions**

18. The standstill requirements set forth in Paragraphs 14 through 16 above do not

extend to legal actions or remedies brought by the OVEC Entities against third parties which might affect, directly or indirectly, Patriot's environmental or mining permits or applications for the same, provided that Patriot is not a party to such actions or remedies. If the OVEC Entities bring such a legal action against, or seek any remedy from, a third party, such as but not limited to, the West Virginia Department of Environmental Protection, Patriot may, at its sole discretion, intervene in the action to protect its legal rights or to assert its interests, and this Agreement shall not be deemed a waiver of any right, defense, or claim that Patriot might assert. Patriot Coal's right to intervene shall not render an action or remedy under this paragraph subject to the standstill provisions in Paragraphs 14 through 16 above.

**Prohibition on Mining in New Selenium Bearing Seams**

19. Over the period in which this Agreement is in effect, Patriot agrees that it will refrain from mining by surface mining methods any seams of coal not currently permitted within West Virginia now known, or hereafter shown to discharge selenium into public waters in excess of the applicable water quality standard. Nothing in this Agreement shall be interpreted, however, as prohibiting Patriot from taking all necessary acts to secure the permits from the issuing agencies for the eventual mining of such seams of coal. Moreover, nothing in this Agreement shall be interpreted as prohibiting the OVEC Entities or those persons or organizations which it now or hereafter may represent as commenting, objecting or challenging the issuance of such permits.
20. The prohibition expressed in paragraph 19 will not apply to: (a) underground coal mines (highwall and or/ auger mining operations are not considered underground coal

mines for the purposes of this agreement); (b) refuse areas; (c) impoundments and (d) access roads and drainage ditches.

21. The amendments to Apogee Coal's North Rum (NPDES permit WV1022792) and Hobet Mining's Hewitt Creek (NPDES permit WV1020234) mine extensions will not be covered by the prohibition identified in paragraph 19.
22. To settle potential civil penalties claims against Apogee's Northwest Ruffner Surface Mine (permit number WV1013599) through and including March 1, 2013, Patriot agrees to make a contribution in the amount of \$1,000,000 to the West Virginia University College of Law Land Use and Sustainability Law Clinic under those terms and for the purposes expressed in Appendix B to this Agreement. That payment will be made within 7 days of the signing of this agreement.

#### **Effect of Settlement and Reservation of Rights**

23. For the term of this Agreement, the OVEC Entities waive all legal and equitable remedies available to enforce the selenium limits of the permits identified in the civil actions enumerated herein except for Apogee and Hobet 22 and except as expressly stated in this Agreement. Nothing in this Agreement, however, shall be interpreted as a waiver, compromise or settlement of any cause of action personal to Plaintiffs' members, under either statute or common law, for personal injury or property damage resulting from Defendant's selenium discharges.
24. Patriot's compliance with this Agreement shall not be a defense to any action commenced pursuant to any such laws, regulations or permits, except as set forth herein. The OVEC Entities do not, by their consent to this Agreement, warrant or aver in any manner that Patriot's compliance with any aspect of this Agreement shall



result in compliance with provisions of the Act, 33 U.S.C. § 1311, *et seq.*, or with any other provisions of federal, state or local laws, regulations or permits.

25. This Agreement does not limit or affect the rights of Patriot or the OVEC Entities against any third parties not party to this Agreement.
26. This Agreement shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Agreement.

**Notice**

27. Unless otherwise specified herein, whenever notifications, submissions, reports or communications are required by this Consent Decree, they shall be made in writing and addressed as follows:

To the OVEC Entities:

Derek Teaney  
Appalachian Center for the Economy and the Environment  
P.O. Box 507  
Lewisburg, WV 24901

To Patriot:

John McHale, Vice President  
Environmental Engineering and Compliance  
Patriot Coal Corporation  
500 Lee Street East, Suite 900  
Charleston, WV 25301

Joseph W. Bean Esq.  
Senior Vice President, Law and Administration  
Patriot Coal Corporation  
12312 Olive Road Boulevard  
St. Louis, MO 63141

28. Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address provided above.
29. Notices submitted pursuant to this Section shall be deemed submitted upon mailing,

unless otherwise provided in this Agreement or by mutual agreement of the Parties in writing.

#### **Reservation of Rights**

30. Plaintiffs and Defendant reserve all legal and equitable rights and defenses available to them to enforce or defend the provisions of this Agreement.

The parties agree that they shall provide written notice of any alleged breach of this Agreement and that the parties will meet and confer to discuss any alleged breach.

Any party shall have 30 days to cure any alleged breach by, for example, withdrawing any action filed in breach of this Agreement.

#### **Termination**

31. This Agreement shall terminate automatically on April 3, 2012.

#### **Integration**

32. This Agreement together with all orders entered in the above identified civil actions constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Agreement and supersedes all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. No other document except those orders previously entered by the United States District Court for the Southern District of West Virginia in the above identified civil actions, nor any representation, inducement, agreement,

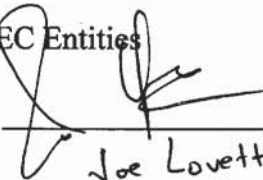


understanding or promise, constitutes any part of this Agreement or the settlement it represents.

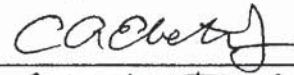
33. The provisions of this Agreement shall be construed in such a manner as to be valid and enforceable.

### Signatories

34. Each undersigned representative of Patriot and the OVEC Entities certifies that he or she is fully authorized to enter into the terms and conditions of this Agreement and to execute and legally bind the Party he or she represents to this document.
35. This Agreement may be signed in counterparts, and its validity shall not be challenged on that basis.

OVEC Entities  
By:   
Joe Lovett - lawyer on behalf  
of OVEC entities  
October 22, 2010

Patriot Coal Corporation

By:   
Chief Operating Officer

USDC/ATTY-004 (Rev. 12/09) | LR Civ P 16.1 Worksheet for Report of Parties Planning Meeting

**WORKSHEET FOR REPORT OF PARTIES' PLANNING MEETING**

The guidelines found in the comments on this form are those recommended by the Court. Generally, the Court expects the parties to adhere to the Guidelines. However, the Court retains authority to make final determination as to all scheduled matters.

Case Style: \_\_\_\_\_

Case No. \_\_\_\_\_ Type of trial requested: Select one:

Date case filed/removed = A: 2/18/2011 Date 1st defendant appears = X: 3/10/2011

Date of scheduling conference: \_\_\_\_\_ Date of Joinder and amendments: \_\_\_\_\_

Last date to serve discovery requests = Y: 10/10/2011

Last date to take a discovery deposition = Z: 11/24/2011

Number of discovery requests and depositions: by Federal Rules.

Rule 26(a)(2) disclosures re experts:

By party bearing burden of proof: 9/26/2011

By party not bearing burden of proof: 10/25/2001

Rebuttal expert disclosures: 11/10/2011

The parties do not consent to a magistrate judge conducting all proceedings.

Mediation (select one):

☐ Date by which mediation will take place: \_\_\_\_\_

☒ At least one party believes that mediation is inappropriate in this action.

Dispositive motions - not Rule 12 (select one):

☒ Date due: 12/14/2011

☐ It is unlikely that dispositive motions will be filed in this action.

Date of settlement meeting and Rule 26(a)(3) disclosures: 2/28/2012

Plaintiff(s) portion of Pretrial Order due to defendant(s): 3/6/2012

Integrated Pretrial Order due: 3/13/2012

Pretrial conference requested for: 3/20/2012

Proposed charge to the jury due: \_\_\_\_\_

-OR-

Proposed findings of fact/conclusions of law due: 3/20/2012

Final settlement conference date requested: 4/2/2012

Trial date requested: 4/3/2012

## **APPENDIX B**

### **FUNDING PROPOSAL**

#### **WEST VIRGINIA UNIVERSITY COLLEGE OF LAW LAND USE AND SUSTAINABLE DEVELOPMENT LAW CLINIC**

##### **INTRODUCTION**

The West Virginia University College of Law (College of Law), Land Use and Sustainable Development Law Clinic (Clinic) focuses on providing transactional legal services to individuals, non-governmental organizations (NGOs) and governmental entities to address land use and conservation needs in West Virginia to protect water quality and quantity for sustainable communities.

With the 1 million dollars from the settlement, the Clinic will be positioned to provide transactional legal services to address unmet land use and sustainable development needs of the state. West Virginia lags significantly behind other states in public and private funding for land and water conservation. Compared to its neighbors, Kentucky, Maryland, Ohio, Pennsylvania, Virginia and Washington, D.C. the state suffers from a lack of public and private conservation infrastructure to support conservation efforts. Directing funds from the settlement to the Clinic provides an excellent opportunity to provide legal services to individuals, NGOs and governmental entities throughout the state and to build the experience and expertise of lawyers in land use and sustainable development.

This Funding Proposal provides the following:

- Description of the expertise and capacity of the College of Law to accomplish Clinic goals.
- Description of Clinic structure.
- Explanation of budget and funding allocations from the settlement and the College of Law.

##### **EXPERTISE AND CAPACITY**

With a one hundred and thirty-two year history of service to the state, the College of Law remains West Virginia's sole law school. The College of Law currently has five clinics, most of which have served West Virginia citizens for decades. In addition, the College of Law has engaged in four extensive land use and sustainable development projects in which faculty and students provided legal services to rural communities to address land conservation and water quality. The long-term clinical experience and the four projects described below demonstrate the College of Law's expertise and capacity to fulfill the Clinic's goals.

- **RURAL COMMUNITIES LAND USE/WATER PROTECTION PROJECT**

Faculty Member: Dean Joyce McConnell



Partnership: Water Research Institute at WVU

Funding: USGS Grant & WVU College of Law

Description: Over a period of six years eight law students under the supervision of Dean McConnell worked with rural communities and county commissions in West Virginia to develop land use plans, primarily for ground water protection. Counties in West Virginia included Monroe County, Greenbrier County, Berkeley County and Jefferson County. Students worked in teams with hydro geologists, facilitated community meetings, assisted county commissioners, and provided legal support for land use plans.

- RURAL COMMUNITIES FARMLAND PROTECTION

Faculty Member: Dean Joyce McConnell

Partnership: WV Department of Agriculture and USDA

Funding: WVU College of Law

Description: Over a period of ten years six law students under the supervision of Dean McConnell worked with rural communities and county commissions in West Virginia to develop farmland protection programs. Students participated in training for county commissions throughout the state, worked directly with individual county commissions and supported individual farmland protection advocates. Students also worked with conservationists throughout West Virginia to meet with landowners interested in conserving property through conservation easements. This project was focused primarily on capacity building in the counties and the project has been very successful. Nineteen counties now have farmland protection boards. A total of 11,475 acres have been protected.

- RURAL COMMUNITIES LAND CONSERVATION SUPPORT

Faculty Member: Dean Joyce McConnell

Partnership: WV-based conservation NGOs, state and federal agencies

Funding: WVU College of Law

Description: Over a ten-year period, student volunteers, under the supervision of Dean McConnell, worked with WV-based conservation NGOs, state and federal agencies to address legal issues raised by community-based land conservation efforts. Examples include, consulting on riparian easements for stream protection, consulting on timbering and stream sedimentation, and working with NGOs on land conservation through sale or donation of development rights or fee simple interests.

- RURAL COMMUNITIES WASTE WATER PROJECT

Faculty Member: Dean Joyce McConnell

Partnership: National Environmental Training Center at WVU

Funding: USDA Rural Development Grant & WVU College of Law

Description: Over a period of three years eight law students under the supervision of Dean McConnell worked with small rural communities in West Virginia and other states (Idaho, Kentucky, New Mexico, Utah and Washington) to find alternative wastewater treatment solutions. Most of the residences in these communities either used no treatment and straight-piped into streams or had failed septic systems. With a team of law students and engineers, teams worked with local communities on decentralized systems to serve the community. The work included meeting with community groups, real property research, real property transactions and facilitating the creation of waste water management entities. Each project took years. One community actually qualified for a federal grant and became connected to a nearby city's central system. Other communities used community managed individual septic systems with community drainfields.

### **CLINIC STRUCTURE**

Under the supervision of a College of Law faculty member(s), second and third-year students will work with individuals, NGOs, and governmental entities to provide transactional legal assistance to protect and conserve land and to enhance water quality. The Clinic is a transactional/non-litigation based program in which students support transactions to protect land and water. Legal services are directed to the following goals:

1. To protect land essential to watershed protection through conservation/riparian easements or other land and water protection strategies.
2. To draft land use plans and ordinances, where needed and possible to protect ground and surface water quality and quantity.
3. To solve residential wastewater issues, such as "straight piping" (pipes that carry human waste from a residence or business without treatment directly to a stream) to protect both ground and surface water.

### **ASSESSMENT CRITERIA AND REPORTING SCHEDULE**

The College of Law will report semi-annually to the Parties based on the Clinic's goals, four-year projected funding and will include the following:

- Narrative description of how clinic activities meet established criteria.
- Quantitative data on number of clients, number of client contacts, category of clients, geographic location of clients, legal services requested, legal needs identified, legal needs addressed, legal solutions employed.
- Narrative descriptions and quantitative data on number of experts, category of experts, site visits of experts, use of experts in legal services provided.
- Narrative descriptions and quantitative data on faculty time and student time dedicated to the provision of services within the Watersheds.
- Narrative identifying met and unmet land use and sustainable development legal needs.
- Narrative goals for completion of ongoing projects.

After two years of full operation of the Clinic, the semi-annual Reports will also include metrics of results developed on the basis of the initial outcomes.

**BUDGET**

The 1 million dollars from the settlement will support the operations of the Land Use and Sustainable Development Law Clinic to expand its services to un-served areas of West Virginia. A detailed budget is attached as a separate document and incorporated into this Proposal.



10/21/10

**Sustainable Development Law Clinic**  
**Preliminary Budget Estimates**  
**Four-year Totals**

	<b>Total Costs</b>	<b>Powellton SEP Settlement Contribution</b>
<b>Personnel</b>		
Faculty Director	559,600	229,600
Full-time Clinical Faculty	357,400	57,400
Full-time staff	120,000	
	-	
<b>Fringe Benefits (@25%)</b>	259,250	71,750
<b>Consultants</b>		
Individual Expert Professionals	200,000	200,000
<b>Equipment and Operations</b>		
Filing fees	50,000	50,000
General Use Funds (Supply & Equip)	44,000	20,000
Travel, Training, Conferences	85,000	60,000
Septic program funds	200,000	177,300
Easement fees and costs	520,000	310,000
Rent (3 years)	65,350	36,250
<b>Overhead</b>		
Internal Indirect Costs (31.6%)	777,550	-
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<b>Total</b>	3,238,150	1,212,300

<b>Patriot Settlement Contribution</b>	<b>WVU Law Contribution</b>
200,000	130,000
140,000	160,000
70,000	50,000
-	-
102,500	85,000
	-
	-
-	24,000
-	25,000
22,700	-
210,000	-
14,700	14,400
240,128	537,421
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1,000,028	1,025,821